

Exhibit 3

Shaham Declaration

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	
In re:)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,)	Chapter 11
)	
Debtors.)	Jointly Administered
-----)	

**DECLARATION OF YARON SHAHAM IN SUPPORT OF RESCAP
BORROWER CLAIMS TRUST AND RESCAP LIQUIDATING
TRUST'S JOINT OBJECTION TO CLAIM NOS. 2535 AND 3577 FILED BY
HAYOMYOM LLC AND SYGMUND ZYGELMAN, RESPECTIVELY**

I, Yaron Shaham, hereby declare as follows:

1. I am an attorney at Severson & Werson, P.C. My firm represents Debtor, GMAC Mortgage, LLC ("GMAC Mortgage") in connection with a case filed by Hayomyom LLC, captioned *Hayomyom v. GMAC Mortgage, LLC et. al.*, Case No. BC 465215 (Cal. Sup. Ct.) (the "State Court Action"). I am a member of the Bars of the States of California and Texas and have been admitted to practice before this Court *pro hac vice*. I submit this declaration in support of the joint objection of the ResCap Borrower Claims Trust and the ResCap Liquidating Trust to (i) Proof of Claim No. 2535 filed by Hayomyom LLC against GMAC Mortgage and (ii) Proof of Claim No. 3577 filed by Sygmund Zygelman against GMAC Mortgage.

2. During the course of my firm's involvement in the State Court Action, my firm engaged in the discovery process on behalf of certain defendants in the State Court Action, including GMAC Mortgage. Among other things, my firm defended a deposition of former GMAC Bank (n/k/a Ally Bank) employee Robbie Robertson. Although I did not personally defend the deposition, the deposition was defended by another attorney in my office who has since left the firm. Attached hereto as **Exhibit A** is a true and correct copy of a transcript of the

deposition of Robbie Robertson taken on May 17, 2012 in connection with the State Court Action, which I located and obtained from GMAC Mortgage's case file maintained within my firm's centralized electronic storage database.

3. Attached hereto as **Exhibit B** is a true and correct copy of an email correspondence introduced during Mr. Robertson's May 17, 2012 deposition by counsel for Sygmund Zygelman, a defendant and cross-complainant in the State Court Action, which was also obtained from the electronic case file my firm maintains on behalf of GMAC Mortgage.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 11, 2016

/s/ Yaron Shaham, Esq. _____
Yaron Shaham, Esq.

Exhibit A

ORIGINAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

Hayomyom LLC,

Plaintiff,

-vs-

CASE NO. BC465215

GMAC Mortgage, LLC; f/k/a
GMAC Mortgage Corporation,
GMAC Bank; Robbie Robertson;
Sigmund Zygelman; and
DOES 1 through 10, inclusive,

Defendants.

VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF

ROBBIE ROBERTSON

May 17, 2012

1 A-P-P-E-A-R-A-N-C-E-S:

2 FOR THE PLAINTIFF HAYOMYOM LLC:

3 MR. SCOTT BARBAG

4 Attorney at Law

5 The Law Office of Scott Barbag

6 3580 Wilshire Blvd., Suite 1260

7 Los Angeles, California 90010

8
9
10 FOR DEFENDANT AND CROSS-COMPLAINANT SIGMUND ZYGELMAN:

11 MR. WILLIAM (BILL) D. KOEHLER

12 Attorney at Law

13 Law Offices of William D. Koehler

14 12522 Moorpark Street, Suite 103

15 Studio City, California 91604-1390

16
17
18 FOR DEFENDANTS GMAC MORTGAGE, LLC; f/k/a GMAC MORTGAGE
19 CORPORATION, GMAC BANK; ROBBIE ROBERTSON:

20 MR. DAVID M. LIU

21 Attorney at Law

22 Law Offices of Severson & Werson

23 19100 Von Karman Avenue, 7th Floor

24 Irvine, California 92612

25

1 VIDEO OPERATOR:

2 MR. JORDAN DONOVAN

3 Owner/Operator

4 Current Media

5 120 Prospect Street, Suite 2

6 Bellingham, Washington 98225

7
8 COURT REPORTER:

9 MR. PAUL W. RODE

10 Certified Court Reporter

11 Offices of Paul W. Rode & Associates

12 720 East Casino Road

13 Everett, Washington 98203

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

EXAMINATION

PAGE NO.

DIRECT

BY MR. KOEHLER

11

BY MR. BARBAG

96

BY MR. KOEHLER

166

1	<u>INDEX</u>		
2	<u>EXHIBITS</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
3			
4	1	Plaintiff's Notice of Taking Deposition	19
5		of Robbie Robertson and Request for	
6		Production of Documents at Time of	
7		Deposition dated April 27, 2012 (8 pages)	
8			
9	2	Cross-Complaint (40 pages)	36
10			
11	3	The Only One One-Close Fixed Rate	WITHDRAWN
12		Construction/Permanent Mortgage Loan	
13		Program Fixed Rate Loan Commitment,	
14		Unsigned (24 pages)	
15			
16	3	The Only One One-Close Fixed Rate	45
17		Construction/Permanent Mortgage Loan	
18		Program Fixed Rate Loan Commitment,	
19		Signed, BATE STAMP ROBERTSON000001	
20		through ROBERTSON000009 (9 pages)	
21			
22	4	Construction Loan Agreement dated	45
23		February 29, 2008, Signed, BATE STAMP	
24		ROBERTSON000010 through ROBERTSON000019	
25		(10 pages)	

1		<u>INDEX</u>	
2	<u>EXHIBITS</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
3			
4	5	Defendant Sigmund Zygelman's Special	68
5		Interrogatories Propounded to	
6		Defendant GMAC Mortgage, LLC, f/k/a	
7		GMAC Mortgage Corporation Set One	
8		(32 pages)	
9			
10	6	Cross-Defendant GMAC Mortgage, LLC, f/k/a	70
11		GMAC Mortgage Corporation's Responses	
12		to Cross-Complainant's Special	
13		Interrogatories, Set One (1) (13 pages)	
14			
15	7	GMAC Mortgage Account Statement, Sigmund	72
16		Zygelman, Statement Date April 19, 2010	
17		(1 page)	
18			
19	8	E-mail dated Dec. 28, 2011 from Sigmund	75
20		to Bill K. with "Attached Message"	
21		dated 26 Aug 2009 from Robertson, Robbie	
22		to Sigmund (1 page)	
23			
24	9	E-mail dated August 18, 2009 from	76
25		Robertson, Robbie to Sigmund (1 page)	

1	<u>INDEX</u>		
2	<u>EXHIBITS</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
3			
4	10	E-mail dated August 12, 2009 from	80
5		Mark Taylor to robbie.robertson	
6		(1 page)	
7			
8	11	Letter dated September 22, 2008 from	86
9		Richard J. Smith, Senior Vice President,	
10		GMAC Bank, to "Dear GMAC Bank/Mortgage	
11		Customer" (1 page)	
12			
13	12	"GMAC Mortgage, LLC, f/k/a GMAC Mortgage	106
14		Corporation's Responses to Plaintiff's	
15		Special Interrogatories, Set One (1),"	
16		Responses No. 7, No. 8, No. 9 (5 pages)	
17			
18	13	E-mail dated July 1, 2009 from Robertson,	138
19		Robbie to Sigmund (1 page)	
20			
21	14	Bank of the West Statement, Statement	144
22		Period 05/14/09 through 06/11/09 (1 page)	
23			
24			
25			

1		<u>INDEX</u>	
2	<u>EXHIBITS</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
3			
4	15	Letter dated June 29, 2009 from Jeffrey D.	144
5		Harter, Vice President, Bank of the West,	
6		To Kim Pacini, Lyons Realty (1 page)	
7			
8	16	Residential Purchase Agreement and Joint	145
9		Escrow Instructions (And Receipt For	
10		Deposit) dated 6/7/09 (10 pages)	
11			
12	17	Addendum to Purchase Agreement Dated	146
13		06-07-2009 (1 page)	
14			
15	18	E-mail dated June 8, 2009, from Robertson,	148
16		Robbie to Sigmund; e-mail dated	
17		June 8, 2009, from Sigmund to Robertson,	
18		Robbie (1 page)	
19			
20	19	"Attached Message" e-mail dated	155
21		17 Aug 2009 from Robertson, Robbie to	
22		Sigmund; "Attached Message" dated	
23		15 Aug 2009 from Robertson, Robbie to	
24		Sigmund (1 page)	
25			

1 BE IT REMEMBERED, that on the 17th day
2 of May, 2012, commencing at the hour of 10:34 a.m. of said
3 day, the Videotaped Deposition Upon Oral Examination of
4 ROBBIE ROBERTSON was taken upon behalf of the Plaintiff at
5 Hoyt Legal Offices, 3014 Hoyt Avenue, in the city of
6 Everett, county of Snohomish, state of Washington, before
7 Paul W. Rode, Certified Court Reporter and Notary Public in
8 and for the State of Washington;

9 WHEREUPON, the following proceedings
10 were had and testimony given, to-wit:

11 //

12 //

13 THE VIDEOGRAPHER: We're on the record.
14 This is the videotape portion in the deposition of
15 Robbie Robertson. My name is Jordan Donovan and I'm
16 the videographer employed by Current Media. Current
17 Media will retain the master and certify and make
18 copies. The Court Reporter is Paul Rode. This
19 deposition is being recorded on the 17th day of May,
20 2012. The time is now approximately 10:34 a.m. We
21 are located at 3014 Hoyt Avenue, Everett, Washington
22 98201. This deposition is being recorded in the
23 matter of *Hayomyom LLC, Plaintiff vs GMAC Mortgage,*
24 *LLC; f/k/a GMAC Mortgage Corporation, GMAC Bank;*
25 *Robbie Robertson; Sigmund Zygelman; and DOES 1 through*

1 10, inclusive, Defendants. The Case Number is
2 BC465215 in the Superior Court of the State of
3 California, for the County of Los Angeles, Central
4 District.

5 Counsel and all present please identify
6 yourselves for the record and then the witness will be
7 sworn.

8 MR. KOEHLER: Good Morning. Bill
9 Koehler for Defendant and Cross-Complainant Sigmund
10 Zygelman.

11 MR. BARBAG: Good Morning. Scott Barbag
12 for Plaintiff Hayomyom LLC.

13 MR. LIU: Good Morning. David Liu,
14 L-I-U, for Defendants and Cross-Plaintiffs GMAC
15 Mortgage, LLC and GMAC Bank, and special appearing for
16 Robbie Robertson on his two Motions to Quash.

17 THE COURT REPORTER: Please raise your
18 right hand.

19 //

20 //

21 ROBBIE ROBERTSON, called as a witness on behalf of the
22 PLAINTIFF, after being first duly sworn
23 was examined and testified as follows:

24 //

25 //

DIRECT EXAMINATION

QUESTIONING BY MR. KOEHLER:

Q Good morning, Mr. Robertson. Please state your full name for the record.

A My name's Robbie Robertson.

Q Mr. Robertson, you may have just heard, my name is Bill Koehler and I represent Defendant and Cross-Complainant Sigmund Zygelman in this matter. Have you ever had your deposition taken before?

A Yes.

Q On how many occasions?

A Twice.

Q When was the most recent?

A What year, this is -- 13, 14 years ago, its been some time.

Q Well, then let me run through the procedure that you're going to be subjected to this morning. The gentleman at your far right is a Court Reporter who will take down all the questions that I ask you and all of your answers and you are under oath just like if you were testifying in a court of law. And upon completion of your deposition in a couple weeks time he will provide you with a booklet of my questions and your answers, and we will request for you to review that to make sure that the information that you

1 testified to is accurate; however, if you find that
2 there are any inaccuracies or changes you wish to make
3 you have the opportunity to do so. You will be
4 signing the transcript under penalty of perjury. I do
5 want to caution you though that in the event you make
6 any major changes that that could affect your
7 credibility should this matter go to trial and so we
8 ask that you give your best testimony here this
9 morning.

10 Do you understand that?

11 A Yes.

12 Q We ask that your answers be audible. When we're
13 sitting around talking to our wives and children and
14 friends we use nods of heads and gestures and that in
15 lieu of spoken statements, and those are hard to
16 interpret; so that we have a clear record we ask that
17 your answers be audible.

18 Do you understand that?

19 A Yes.

20 Q From time to time I may ask you your estimate
21 regarding something, but on the other hand we do not
22 want you to guess because a guess doesn't do anybody
23 any good. With that in mind, do you understand the
24 distinction between a guess and an estimate?

25 A Yes.

1 Q If I ask a question that you've kind of dozed off on
2 or you don't understand, please ask me to restate the
3 question, be happy to, because if you answer the
4 question we'll assume that you understood the question
5 and you were responding to that question.

6 Fair enough?

7 A Yes.

8 Q So far you're doing good in making your answers
9 audible and keeping your voice up, and it's important
10 though that only one talk at a time so that we have a
11 clear record. So if you'll allow me to complete my
12 question, I will provide the same courtesy to you in
13 your answer. If for any reason you need to take a
14 break, want to use the restroom, you want to confer
15 with Mr. Liu, just say so and we'll go off the record
16 and take a break.

17 Do you understand all of those admonitions?

18 A Yes.

19 Q Is there any reason you cannot give us your best
20 testimony here this morning?

21 A As of right at this moment, no, there's no reason.
22 However, I am under some fairly substantial
23 medications that do cause me to be fatigued very
24 easily and get very tired, so I may as this thing goes
25 on I may end up asking you to repeat other things just

1 because of the simple fact that it slows me down
2 enough that I have to think about things.

3 Q What medications are you taking currently, sir?

4 A There's -- well, let me -- let me -- I'd like to ask
5 because medical issues are private, aren't they? (To
6 Mr. Liu)

7 MR. LIU: They are, but it's a fair
8 question.

9 THE DEPONENT: All right.

10 //

11 A The first one is Interferon, Pegasys, and I think it's
12 called a 2a, and that's 120 units a week by virtue of
13 shot. And then 800 to 1200 milligrams of Ribavirin
14 daily. And I just completed a thousand milligrams a
15 day three month treatment of -- excuse me, four month
16 treatment of Incivek.

17 Q (by Mr. Koehler) Have you taken each of those
18 medications today?

19 A The Ribavirin. The shot I only take once a week.

20 Q The medication that you take does it have an effect
21 upon your memory, to your knowledge?

22 A I'm going to have to say yes in that it just takes a
23 little bit longer for recall.

24 Q Other than that does it have any other effect upon
25 your memory that you're aware of?

1 A Not that I'm aware of.

2 Q Does it affect your ability to think clearly?

3 A I'm going to say no, but it does affect my ability to
4 maintain a long term train of thought.

5 Q I would ask then if you find yourself becoming
6 fatigued and it affecting your recall, if at that
7 point you would ask to take a break because we'd like
8 to have you fresh for your deposition. Fair enough?

9 A Sure. Yes.

10 Q Have you ever been convicted of a felony?

11 A No.

12 Q Are you currently employed?

13 A Yes.

14 Q And by whom?

15 A Whidbey Island Bank.

16 Q Would you spell the name of that?

17 A W-H-I-D-B-E-Y, I-S-L-A-N-D, B-A-N-K.

18 Q And where are they located?

19 A My office is located at 16710 Smokey Point Boulevard,
20 Suite 401, Arlington, Washington 98223.

21 Q And how long have you been employed by Whidbey Bank?

22 A I've been employed with -- Whidbey Island Bank is an
23 acquiring institution of a failed institution that I
24 had been employed with, so when they asked me to stay
25 on after the purchase my employment date carried

1 through with me, although Whidbey Island Bank did not
2 acquire North County Bank, the previous failed
3 institution, until September 24th, 2010, that's when I
4 became an employee of Whidbey Island Bank because of
5 the transfer. But prior to that I started with North
6 County Bank and that was on February 28th, 2010.

7 Q And when you started with -- you said North County
8 Bank?

9 A Yes, sir.

10 Q What was your job title?

11 A When I started with them it was Manager, Special
12 Credits.

13 Q And what are the duties assigned to the Manager in
14 Special Credits?

15 A To dispose of nonperforming assets by virtue of the
16 sale of foreclosed real estate property, to begin
17 foreclosure litigation, to do forbearance workouts,
18 negotiations, callbacks, those kind of things on loans
19 and borrowers that were in trouble.

20 Q And did those duties change when Whidbey Island Bank
21 took over?

22 A The duties were essentially the same. The policies
23 changed because I was now working under FDIC Purchase
24 and Assumption Agreement and FDIC Whidbey Island Bank
25 Loss Share Agreement.

1 Q Would you give us your educational background starting
2 with high school.

3 A High school? Graduated high school. I've attended
4 numerous colleges without a degree; National Mortgage
5 Bankers Association which took me to University of
6 Alabama at Huntsville, Ohio State University and
7 Northwestern University; attended Shoreline Community
8 College in Real Estate Finance, Real Estate Appraisal,
9 Real Estate Law; attended US -- UCSD had a number of
10 courses back in the '70s on plastic technology
11 primarily dealing with carbon graphite, prepregs and
12 those other advanced composite materials; numerous
13 college seminars and professional study seminars
14 throughout the last 30 years, so ...

15 Q How many units of college work did you complete?

16 A I don't recall.

17 Q And did I hear you correct when you said you have not
18 obtained any degree?

19 A Correct.

20 Q Do you hold any professional licenses?

21 A No.

22 Q Have you ever held any professional licenses?

23 A A Real Estate Broker's license that was relinquished
24 about 28 years ago, at the time I could not carry a
25 real estate license and also be involved in the

1 banking and mortgage lending.

2 Q And that license was issued by whom?

3 A I actually had one with the State of Washington.

4 Q And your reason for relinquishing?

5 A Because I could not hold a real estate license and
6 also be a mortgage banker and banker (sic), and my
7 employer at the time asked me to relinquish it so that
8 there would be no conflict.

9 Q We're here today pursuant to a Notice of Taking
10 Deposition which I'm going to hand to you. (Handing)
11 Now, this Notice asked you to bring documents with
12 you. And have you brought documents with you that are
13 responsive to this Notice?

14 A I have no documents in my possession from my time at
15 GMAC Bank. All the documents that I brought with me
16 today were served upon me by either yourself or
17 Mr. Barok -- did I pronounce that correctly?

18 MR. BARBAG: Mr. Zipp or Barbag, my
19 name is Barbag.

20 THE DEPONENT: (Interposing) I
21 assume that you as his attorney was the one that
22 served it.

23 MR. LIU: I'm sorry, just so it will be
24 clear, are we doing the depo Notice as Exhibit "1"?

25 MR. KOEHLER: Yes. I'm sorry, yes.

(Exhibit No. "1" marked for
identification by Reporter.)

//

Q (by Mr. Koehler) So you do have documents here today
responsive to the Request?

A No. I have documents that you folks presented to us
and that's -- but as far as in response -- I don't
have any documents from GMAC other than what you have
provided in the ...

Q What I was going to do if there were documents, since
this is Mr. Barbag's Notice I was going to have him
review the documents, if you have any questions
regarding those. So I will pass on that for the time
being and maybe at a break if Mr. Barbag wishes to
review, instruct me to regurgitate ...

A He can look at it now if you want.

Q No, I really don't. So let's move on.

Prior to your deposition here this morning did
you review any documents in preparation for your
deposition?

A Just, well, let's see. Actually yes.

Q And what documents did you review?

A Let's see here. The One-Close Fix Rate
Construction/Permanent Mortgage Loan Program
documentation, that was the subject of the loan to

1 Mr. Zygelman. The Deed of Trust that was recorded,
2 again ...

3 MR. LIU: If I could interrupt, just so
4 we can speed this along, the documents that we
5 reviewed are the documents that were produced this
6 morning, BATE STAMP ROBINSON000001 through
7 ROBINSON000123.

8 //

9 Q (by Mr. Koehler) Those were the documents then that
10 you reviewed prior to your deposition.

11 A Correct.

12 Q Thank you. And when did you review these documents?

13 A Yesterday.

14 Q And your purpose for reviewing them?

15 A Just so I could see what I was going to be talking
16 about.

17 Q Now, other than conversations you may have had with
18 Mr. Liu, did you talk to anyone else regarding your
19 testimony here this morning?

20 A Another attorney with GMAC Bank.

21 Q Other than that attorney did you talk to any other
22 individual pertaining to your deposition?

23 A (Interposing) No.

24 Q In the year 2008 were you employed?

25 A Yes.

1 Q By whom?

2 A GMAC Bank.

3 Q Was that your sole employer?

4 A No. I'm also an elected public official, Public
5 Utility Commissioner in Skagit County, Washington
6 which is essentially water treatment and distribution
7 to about a hundred and twenty thousand citizens in
8 Skagit County.

9 Q In the year 2008 were you also employed by GMAC
10 Mortgage, LLC?

11 A I don't think so. And forgive me if that sounds --
12 let me try to explain that.

13 Q Please.

14 A Hired in at GMAC Bank, and GMAC Mortgage was
15 intrinsically integrated with the bank operation and I
16 didn't -- so while most all of my work was done with
17 GMAC Mortgage, the employer was actually GMAC Bank.
18 And so ...

19 MR. LIU: And if I can just interject
20 and just to be clear, I've advised counsel for
21 Plaintiff and Cross-Complainant that GMAC Mortgage
22 filed for Chapter 11 Bankruptcy protection, so we
23 can't do or conduct any discovery as to GMAC Mortgage;
24 however, you know, as it relates to Mr. Robertson's
25 employment, you know any question is fine.

1 MR. KOEHLER: And it is my understanding
2 that the bankruptcy filing was only as to GMAC
3 Mortgage and not GMAC Bank ...

4 MR. LIU: That's right.

5 MR. KOEHLER: (Continuing) ... which I
6 understand is now Ally Bank.

7 MR. LIU: That's correct.

8 //

9 Q (by Mr. Koehler) Who wrote your paychecks?

10 A GMAC Bank.

11 Q And when did you start with GMAC Bank?

12 A April 1st, 2007.

13 Q And what was your job title?

14 A When I first started it was Regional Construction
15 Sales Manager.

16 Q And during your term of employment with GMAC Bank did
17 your job title change?

18 A Yes.

19 Q And what did it change to?

20 A It changed to District Risk Manager.

21 Q Were there any other job title changes?

22 A No.

23 Q As a Regional Construction Sales Manager what were
24 your duties?

25 A To train and educate loan officers on retail GMAC

1 Mortgage side as well as wholesale brokers to the use
2 of the GMAC Construction Lending Programs which was
3 what they referred to as their All-In-One and their
4 Two-Step; to counsel with the loan officers on the use
5 of the tools and equipment that was designed and used
6 by GMAC Mortgage in the preparation of their
7 construction loan, things like: the builders package
8 and documentation that's needed, the cost breakdown,
9 the description of materials, all those things that
10 are associated building a house. You had to sort of
11 explain the documentation and teach the loan officers
12 what a Description of Materials was and the parameters
13 of the loan program, what, you know, the length of
14 time that you had for construction lending and those
15 kind of educational issues.

16 Q Do you recall the inclusive dates that your title was
17 Regional Construction Sales Manager?

18 A I believe -- well, it was from when I started April 1
19 of '07 and I believe it was sometime in June of 2009
20 -- excuse me, when did we change that to -- no, it
21 would have been in around July of 2008 that it changed
22 to District Risk Manager.

23 Q And --

24 A (Interposing) No, excuse me. Excuse me. Excuse me.
25 I'm going to say August. It was somewhere in that

1 July/August 2008.

2 Q And that's when it changed from Regional Construction
3 Sales Manager to District Risk Manager?

4 A Correct.

5 Q And what was the reason for the job title change?

6 A GMAC shut down the Construction Lending Department in
7 light of the economic calamities that were befalling
8 this country and the financial difficulties that GMAC
9 Mortgage was having relative to secondary marketing.

10 Q And when did GMAC shut down their real estate
11 construction --

12 MR. LIU: (Interposing) I'm going to
13 interrupt right there. The deposition here is only
14 for Mr. Robertson's Motion to Quash. I don't think
15 any questions relative to why GMAC closed down its
16 construction lending is relevant, it's outside the
17 scope of his contacts with California. I'm going to
18 object and instruct him not to answer.

19 MR. BARBAG: I don't know that our
20 deposition Notice was limited to that and I have a
21 concern about that because we were only entitled to
22 one deposition, so unless you're allowing us to depose
23 him multiple times.

24 MR. LIU: We will permit Mr. Robertson
25 to be deposed again as to the allegations in the

1 Complaint and Cross-Complaint if the Motion to Quash
2 the Summons is denied. So right now the only scope of
3 this deposition is through our Motion to Quash and if
4 I let the questions go outside the scope of Motion to
5 Quash then I'm waiving his objections as to you know
6 what he can get deposed on.

7 MR. KOEHLER: Well, quite frankly this
8 catches me aback because it was my understanding that
9 because you didn't want Mr. Robertson to have to go
10 through multiple deposition that we would do one
11 deposition as opposed to each of us having to the
12 ability to do one deposition. And I'm not recalling
13 that there was any limitations put on what the subject
14 of that deposition would be.

15 MR. BARBAG: That's my understanding as
16 well. There's no objection to the deposition Notice
17 and since he is a party to this he's already responded
18 to other discovery outside the scope. So ...

19 MR. LIU: He has not responded to
20 discovery outside the scope. And the deposition
21 Notice is only limited to, as to the document
22 requests, are only limited to his Motion to Quash and
23 his contacts with California.

24 MR. BARBAG: I would disagree. The
25 formal Interrogatories that were sent to him were not

1 sent just exclusively for whether he was part of
2 California, he was answering that as a party to the
3 suit.

4 MR. LIU: We can probably take a break
5 if you want. I don't recall that he's answered any
6 formal Interrogatories.

7 MR. BARBAG: Sure.

8 THE VIDEOGRAPHER: Please stand by. The
9 time is now approximately 10:58 a.m., we're off the
10 record.

11 (Off the record.)

12 //

13 THE VIDEOGRAPHER: We are on the record.
14 The time is now approximately 11:05 a.m.

15 MR. KOEHLER: We had a discussion off
16 the record regarding the scope of this deposition.
17 And I'm going to ask the Court Reporter to read back
18 the question on the record and the response from
19 Mr. Liu if you would please.

20 (Question and objection
21 read by Reporter.)

22 //

23 MR. KOEHLER: Just so we have a clear
24 record and what the scope is today: If we are limited
25 to asking Mr. Robertson questions pertaining to the

1 issues relevant to his Motion to Quash, there may be
2 questions -- should his Motion be denied, there may
3 very well be questions that he has the ability to
4 respond to which would require a second deposition.
5 And I would like Mr. Liu to verify on the record that
6 he's aware of that and he will permit a second
7 deposition of Mr. Robertson in the event
8 Mr. Robertson's Motion to Quash is unsuccessful.

9 MR. LIU: No, I agree. And we will make
10 Mr. Robertson available assuming that his Motion to
11 Quash and Service and Summons are denied, then he'll
12 be available to respond to discovery as it relates to
13 the allegations in the Complaint and Cross-Complaint.

14 MR. BARBAG: I would also put on the
15 record that I think that right now as the deposition
16 Notice stands we're entitled to ask about relevant
17 issues with regard to the Complaint and you're saying
18 you disagree, unless I'm misstating.

19 MR. LIU: No, no. I'm saying with
20 respect to Hayomyom's Complaint obviously you know if
21 he made any statements to Hayomyom or its principal
22 Mr. Zipp in California.

23 MR. BARBAG: All right. I guess we'll
24 see where it goes.

25 //

1 Q (by Mr. Koehler) So as I understand, Mr. Robertson,
2 your title changed from Regional Construction Sales
3 Manager to District Risk Manager sometime in
4 July/August of 2008.

5 A Correct.

6 Q Did your duties as a District Risk Manager change from
7 those of a Regional Construction Sales Manager?

8 A Yes.

9 Q What were the new duties that you were charged with?

10 A To do -- to help those borrowers that were in
11 declining markets or what having struggles keeping up
12 with their payments on their construction loan or
13 completion of loan and so that our focus was to make
14 sure that we got all the construction loans in the
15 portfolio closed out in a timely manner.

16 Q And you were performing those duties as an employee of
17 GMAC Bank?

18 A Correct.

19 Q Now, prior to your employment with GMAC Bank what was
20 your most recent prior employment?

21 A Prior to that it was Frontier Bank.

22 Q Do you recall the dates of service?

23 A Wait a second, I was at Frontier that would have been
24 January of 2006 through I believe August of 2006.

25 Q Okay. Where was or is Frontier Bank?

1 A Frontier Bank was seized by the Department of
2 Financial Institution, State of Washington. The
3 assets were assigned to the Federal Deposit Insurance
4 Corporation which subsequently entered into a Purchase
5 and Assumption Agreement with Union Bank, so Frontier
6 Bank no longer exists.

7 Q What was your job title with Frontier Bank?

8 A Commercial Loan Officer.

9 Q What were your duties?

10 A To originate within lending limits commercial loans
11 and service the bank customers in a lending
12 environment.

13 Q Between August of 2006 and April of 2007 were you
14 employed?

15 A Yes, well, let me think about that here. Yes, with
16 Skagit PUD.

17 Q I'm sorry?

18 A Skagit Public Utility District as Commissioner. But
19 as formally with a bank or, no, not until I went with
20 GMAC.

21 Q Your reason for leaving Frontier Bank?

22 A It was just not a good fit and -- just was not a good
23 fit.

24 Q Did you resign your position or --

25 A (Interposing) Yes.

1 Q You were doing real good up until that point.

2 A Yes.

3 Q Let me finish the question before you answer.

4 A (Interposing) Oh, I'm sorry. Excuse me.

5 Q So you're now at an A-. Prior to Frontier Bank did
6 you work in the banking industry?

7 A Yes.

8 Q With whom prior to Frontier Bank?

9 A Well, you want me to go through my entire history, is
10 that what you want?

11 Q No, your most recent prior to ...

12 A Prior to Frontier Bank it was a conglomeration of
13 three different companies that had been known as Home
14 One Two Three Mortgage -- I should have brought my
15 resume -- Home One Two Three, RBC Mortgage, and New
16 Century Mortgage. And just for clarification, there
17 was not starting and stopping with three separate
18 different people and organizations, there was mergers
19 and acquisitions that occurred and so that we had no
20 control over who the actual employer was, there was
21 mergers and acquisitions. You have the same job, same
22 office, same people; just different name of the
23 company.

24 Q Who hired you for your position at GMAC Bank?

25 A Tom Webster.

1 THE VIDEOGRAPHER: Excuse me. Mr.
2 Robertson, I could tell that your microphone's just
3 about to fall off, so if you can just give it a better
4 grip on your tie.

5 //

6 Q (by Mr. Koehler) Is that W-E-B-S-T-E-R?

7 A Webster, correct.

8 Q And what was Mr. Webster's job title?

9 A Regional Construction Lending Sales Manager.

10 Q I'm sorry, say that again?

11 A Regional Construction Sales Manager.

12 Q And to your knowledge is Mr. Webster still with GMAC
13 Bank?

14 A No.

15 Q Do you know when he left?

16 A No.

17 MR. LIU: Objection, irrelevant to the
18 scope and Motion to Quash.

19 //

20 Q (by Mr. Koehler) At the time of your employment were
21 you given any written instructions relative to your
22 job description?

23 A I don't understand the question.

24 Q At the time you were hired were you provided with some
25 type of a manual or book explaining what your job

1 duties are?

2 A No.

3 Q How were your job duties then conveyed to you?

4 A Verbally through Tom Webster and there was a Policies
5 and Procedures Handbook that was being drafted to be
6 implemented into the Construction Program that
7 Mr. Webster provided me.

8 Q Was that after you were already employed by GMAC Bank?

9 A Correct.

10 Q And did that Policies and Procedures Manual provide a
11 description of what your duties were?

12 A In a general outline, yes.

13 Q Other than Mr. Webster was there anyone else that
14 described to you what your job duties would be?

15 A Yes.

16 Q Who?

17 A Rick Smith.

18 Q And what was his job title?

19 A He was also at the time was called Regional
20 Construction Lending Manager.

21 If I can for clarification: Mr. Webster was
22 Western Regional, Mr. Smith was the Central and
23 Northeastern Regional.

24 Q And to your knowledge is Mr. Smith still employed by
25 GMAC Bank?

1 MR. LIU: Objection, outside the scope
2 of the Motion to Quash, instruct him not to answer.

3 //

4 Q (by Mr. Koehler) Mr. Robertson, are you familiar with
5 an organization by the name of GMAC Mortgage, LLC?

6 MR. LIU: Objection, outside the scope
7 of the Motion to Quash, instruct him not to answer.

8 //

9 Q (by Mr. Koehler) Were you ever employed by GMAC
10 Mortgage, LLC?

11 A Not to my knowledge.

12 Q Now, the duties that you provided to GMAC Bank first
13 as a Regional Construction Sales Manager, did you work
14 from an office?

15 A Yes.

16 Q And where was that office located?

17 A There was the main office in this area was located in
18 Lynnwood, Washington and I had shared office space
19 with the folks of GMAC Mortgage in Lynnwood and then
20 they had opened up an office in Mount Vernon,
21 Washington of GMAC Mortgage of which then I moved my
22 office up and shared with the folks in GMAC Mortgage
23 in Mount Vernon.

24 Q At the time you were employed by GMAC Bank were you
25 aware of what the business relationship was with GMAC

1 Mortgage, LLC?

2 MR. LIU: Objection, outside the scope
3 of Motion to Quash, instruct him not to answer.

4 //

5 Q (by Mr. Koehler) Mr. Robertson, are you familiar with
6 an individual by the name of Sigmund Zygelman?

7 A Yes.

8 Q And how did you come to know or be acquainted with
9 this gentleman?

10 A Mr. Zygelman had an active construction loan with GMAC
11 Bank.

12 Q Did you ever meet Mr. Zygelman face to face?

13 A No.

14 Q Was one of your job duties to oversee the loan that
15 Mr. Zygelman had with GMAC?

16 A I think I need a clarification on that, I'll try and
17 answer it. I have --

18 MR. LIU: (Interposing) Do you
19 understand the question?

20 THE DEPONENT: No.

21 //

22 A If you could, because there's a big difference between
23 a loan and a construction contract.

24 Q (by Mr. Koehler) Okay. Did you oversee the
25 construction contract that was between Mr. Zygelman

1 and GMAC Mortgage?

2 MR. LIU: Objection, no foundation that
3 the construction loan was with GMAC Mortgage.

4 MR. BARBAG: That isn't to the form of
5 the question though. Foundation.

6 //

7 Q (by Mr. Koehler) Tell me again how you first became
8 acquainted with Mr. Zygelman?

9 A I was I believe it was in June of 2008 when I sent an
10 e-mail to Mr. Zygelman and his contractor at the time,
11 I believe his name is Mark Thomas, introducing myself
12 as the new account representative that would be
13 handling the draws, the monthly draw inspections for
14 the construction.

15 Q What were your job duties as it related to
16 Mr. Zygelman's construction contract?

17 A To monitor the -- basically to take the draw requests
18 on a monthly basis, coordinate the ordering of the
19 draw inspection by a construction inspection firm, a
20 validation of the completed inspection and the
21 preparation of sending lien waiver documents along
22 with line item draws that were available to be
23 disbursed to the contractor, and upon their signatures
24 of acceptance then I would submit those for payment.

25 Q Other than yourself was there anyone else providing

1 any of the duties that you just testified to with
2 respect to Mr. Zygelman's construction contract?

3 A Yes.

4 Q Who?

5 A I don't recall all of the names, but it was the
6 Construction Lending Staff of GMAC Bank located in
7 Fort Washington, Pennsylvania.

8 Q Were there any staff members that Mr. Zygelman
9 interacted with that were located in California?

10 A No.

11 Q At any time did you maintain an office in California?

12 A No.

13 Q And you were providing those duties on behalf of GMAC
14 Bank?

15 A Yes, sir.

16 Q Now, you're aware Mr. Zygelman has filed a
17 Cross-Complaint in this action. I'm going to provide
18 you with a copy. (Handing) We'll mark as Exhibit "2".

19 (Exhibit "2" marked for
20 identification by Reporter.)

21 //

22 Q (by Mr. Koehler) Have you seen this Cross-Complaint
23 before?

24 A I believe so, yes.

25 Q Have you had an opportunity before today to read the

1 allegations as they pertain to you?

2 A Yes.

3 Q At any time during your employment with GMAC Bank did
4 you maintain any type of a satellite office in the
5 state of California?

6 A No.

7 Q Did GMAC Bank have any offices in the state of
8 California for the purpose of servicing construction
9 contracts?

10 A I honestly don't know. Oh, well, excuse me. Wait a
11 second. Now, servicing contracts, if you can clarify
12 that. And "servicing" meaning disbursement of moneys
13 or someone in my position?

14 Q Okay, fair enough. For the purpose of disbursing
15 funds to Mr. Zygelman pursuant to the construction
16 contract did GMAC Bank maintain any offices in
17 California?

18 A No.

19 Q The payments that were made to Mr. Zygelman or his
20 contractor pursuant to his construction contract,
21 where did those payments originate?

22 A Fort Washington, Pennsylvania.

23 Q Did you have any staff members or any individual that
24 reported to you?

25 A Further clarification: In my duties here on the west

1 coast, no; did I have one individual that was assigned
2 to process the draw requests for the Western Region,
3 yes.

4 Q And who was that?

5 A A lady -- there was several, but the primary one was a
6 lady by the name of Patty Costello, and her immediate
7 supervisor Sue Young. And there had been another
8 individual, his name escapes me, that was at one point
9 in time was Sue Young's immediate supervisor and then
10 he for whatever reasons he left the company.

11 Q Do you remember who that individual was?

12 A No, I don't recall his name. He was only there a
13 short while.

14 Q And where did Patty Costello work?

15 A Fort Washington, Pennsylvania.

16 Q And where did Sue Young work?

17 A Fort Washington.

18 Q Which is in Pennsylvania?

19 A (Interposing) Pennsylvania.

20 Q Was part of your duties to go out and observe the
21 construction that was being done by Mr. Zygelman as it
22 relates to his construction contract with GMAC?

23 A No.

24 Q Were you ever to the premises that was being
25 constructed by Mr. Zygelman in conjunction with the

1 construction contract he obtained from GMAC?

2 A No.

3 Q Did you ever instruct anyone on your behalf to go out
4 and observe the premises that was being constructed by
5 Mr. Zygelman in conjunction with the construction
6 contract he obtained from GMAC?

7 MR. LIU: Objection, vague and
8 ambiguous. Are you asking as a GMAC employee or as
9 like an independent contractor?

10 //

11 Q (by Mr. Koehler) As an employee.

12 A Did I instruct someone? I placed orders for draw
13 inspections.

14 Q Okay. And what is a draw inspection?

15 A A draw inspection is whereby an independent third
16 party goes out and does a full inspection of the
17 property looking for percentage of completion, work
18 completion, materials onsite, takes pictures of the
19 subject property and makes a determination of the
20 percentage of completion of the project at that point
21 in time and which line items were available to be
22 disbursed if the customer so chose.

23 Q For purposes of this deposition I will refer to this
24 person as the Inspector. Fair enough?

25 A Yes.

1 Q Was this Inspector an employee of GMAC Bank?

2 A No.

3 Q Was this Inspector an independent contractor?

4 A I have no idea.

5 Q Was there an individual that performed these
6 inspections, one individual, or would there be various
7 individuals?

8 A There was various individuals so I don't know how
9 many, but it was never the same -- there's more than
10 one inspector.

11 Q To your knowledge were these inspectors employed by
12 some third party company?

13 A Yes.

14 Q Do you recall what the name of that company was?

15 A Granite Construction Inspection Services, Denver,
16 Colorado.

17 Q And to your knowledge did they maintain offices in
18 California?

19 A No.

20 Q The inspectors that they had to come out to inspect
21 the Zygelman construction site were these individuals
22 to your knowledge that resided in the state of
23 California?

24 A I have no knowledge.

25 Q How did you go about requesting such an inspection?

1 A There was two steps that occurred and I'll begin with
2 the one that was in place prior to the change of
3 title. There was two different ways that a draw could
4 be requested. Generally draws would be disbursed on a
5 monthly basis and the contractor and/or the borrower
6 would request an inspection from us, we would order
7 the inspection, validate the findings, let the
8 customer know whether or not their request that they
9 made was viable and was going to be payable based upon
10 the terms of the inspection.

11 Q Who would he make that request to, "he" being
12 Mr. Zygelman?

13 A He could either contact me through direct e-mail or he
14 would contact Fort Washington and the individuals back
15 in Fort Washington to begin that process.

16 Q Do you recall on any occasion Mr. Zygelman contacting
17 you by e-mail?

18 A For what purposes?

19 Q Requesting an inspection.

20 A No.

21 Q Do you recall Mr. Zygelman ever telephoning you to
22 initiate an inspection?

23 A No.

24 Q Do you recall Mr. Zygelman using any mode of
25 communication to request of you an inspection?

1 A To request an inspection. No.

2 Q Did you have any direct employees or individuals
3 employed by GMAC Bank that reported to you?

4 MR. LIU: Objection, asked and answered.

5 You can answer.

6 //

7 A Indirectly, but as a direct reporting, no.

8 Q (by Mr. Koehler) Indirectly?

9 A Indirectly.

10 Q Who?

11 A Patty Costello.

12 Q That's the Patty Costello that was back in
13 Pennsylvania.

14 A Correct.

15 Q Anybody in the state of Washington?

16 A No.

17 Q Now, with respect to Exhibit "2," the Cross-Complaint,
18 have you discussed its contents with anyone other than
19 your lawyer?

20 A No.

21 Q Other than lawyers working for GMAC Mortgage or GMAC
22 Bank did you contact any employees of either GMAC
23 Mortgage or GMAC Bank with respect to the allegations
24 contained in Exhibit "2"?

25 A No.

1 MR. KOEHLER: I'm going to show you a
2 document we're going to mark Exhibit "3".

3 I thought I had made enough copies.

4 MR. BARBAG: So far I haven't needed to
5 see them.

6 MR. KOEHLER: Right. And I'll show you
7 it.

8 MR. BARBAG: I think I've seen these.

9 (Exhibit No. "3" marked for
10 identification by Reporter.)

11 //

12 Q (by Mr. Koehler) Mr. Robertson, I've handed you a
13 document entitled The Only One One-Close Fixed Rate
14 Construction/Permanent Mortgage Loan Program.
15 (Handing) Have you seen this document before?

16 A Yes.

17 Q So you're familiar with this Loan Program entered into
18 with Mr. Zygelman?

19 A Yes.

20 Q Are you familiar with the terms and conditions of this
21 Loan Commitment?

22 A As it relates to the construction of the home, yes.

23 MR. LIU: And I'll object to the extent
24 that Exhibit "3" is not signed by Mr. Zygelman.

25 MR. KOEHLER: Let's go off the record

1 for a second.

2 THE VIDEOGRAPHER: Stand by. Go off the
3 record?

4 MR. KOEHLER: Yes, off the record.

5 THE VIDEOGRAPHER: The time is now
6 approximately 11:34 a.m., we are off the record.

7 (Off the record.)

8 //

9 THE VIDEOGRAPHER: We are on the record.
10 The time is now approximately 11:36 a.m.

11 //

12 Q (by Mr. Koehler) Mr. Robertson, I'm going to hand you
13 a document that was produced by Mr. Liu this morning,
14 it's entitled The Only One One-Close Fixed Rate
15 Construction/Permanent Mortgage Loan Program with the
16 borrower Sigmund Zygelman and it's BATE STAMPED
17 ROBERTSON000001 through 000019. Do you have a copy of
18 that document?

19 A Yes, sir.

20 MR. LIU: I'm sorry, I'm going to
21 object. It appears that The Only One One-Close Fixed
22 Rate goes from ROBERTSON 1 to 9, then starting on
23 ROBERTSON 10 it's a separate Construction Loan
24 Agreement.

25 MR. KOEHLER: Okay.

1 THE DEPONENT: That's correct.

2 //

3 Q (by Mr. Koehler) With respect to the document entitled
4 The Only One One-Close Fixed Rate
5 Construction/Permanent Mortgage Loan Program BATE
6 STAMP 000001 through 000009, do you have that document
7 in front of you?

8 A Yes.

9 Q Okay. And have you seen this document before?

10 A Yes.

11 MR. KOEHLER: I'm going to withdraw what
12 we had previously marked as Exhibit "3" and we will
13 mark this as Exhibit "3".

14 (New Exhibit "3" to be
15 marked by Reporter.)

16 //

17 Q (by Mr. Koehler) And I have a Construction Loan
18 Agreement BATE STAMP ROBERTSON000010 through 000019.
19 Do you have that document before you?

20 A (Interposing) Yes.

21 MR. KOEHLER) We'll go ahead and mark
22 that as Exhibit "4".

23 (Exhibit No. "4" to be
24 marked by Reporter.)

25 //

1 Q (by Mr. Koehler) Now, with respect to Exhibit "3," are
2 you familiar with this document as it pertains to
3 Mr. Zygelman?

4 A If you can get a little more clear on the question.

5 And if I can, I was not in ...

6 MR. LIU: And I'll stop you. Have him
7 just ask the question.

8 THE DEPONENT: I'm sorry, yeah.

9 //

10 Q (by Mr. Koehler) Well, obviously you've seen this
11 document before today?

12 A (Interposing) Oh, I've seen the document, yes.

13 Q Okay. And is this the Loan Program that Mr. Zygelman
14 had with -- this document reflect the Loan Program
15 Mr. Zygelman had with GMAC?

16 A To the best of my knowledge.

17 Q Okay. And was it one of your duties to oversee
18 Mr. Zygelman's adherence to the terms and conditions
19 of this The Only One Loan Program?

20 MR. LIU: Objection, vague and
21 ambiguous as to adherence.

22 THE DEPONENT: Yeah.

23 MR. KOEHLER: You can answer the
24 question.

25 MR. LIU: You can answer, so you

1 understand.

2 THE DEPONENT: Okay.

3 //

4 A Yeah, it's -- within the normal course of
5 construction, yes; beyond that, no. I had very
6 limited decision capacity outside of policy and
7 anything around that was considered an exception it
8 would have to be addressed by Mr. Webster and
9 Mr. Smith.

10 Q (by Mr. Koehler) Did you ever have any conversations
11 with Mr. Zygelman pertaining to the terms and
12 conditions of this Agreement?

13 A Yes.

14 Q With respect to Exhibit "4," have you seen this
15 document before today?

16 A Yes.

17 Q Okay. And did you have any conversations with
18 Mr. Zygelman regarding the terms and conditions of
19 this Construction Loan Agreement?

20 A Yes.

21 Q How did these conversations take place? First of all
22 let's start, I'm sorry, with respect to Exhibit "3"
23 how did those conversations take place?

24 A There was a -- well, I believe in around December of
25 2008 there was a phone conversation followed up with

1 e-mails explaining to Mr. Zygelman that GMAC Bank was
2 not able to fund jumbo loans in that the Bank was very
3 helpful or trying to be helpful to help locate renewed
4 permanent takeout financing because at that time the
5 secondary market for jumbo loans -- "jumbo loan" being
6 anything over four hundred and seventeen thousand
7 dollars -- collapsed throughout the entire country and
8 there was no conduit for jumbo loans. And so I had
9 that conversation with Mr. Zygelman in December of
10 2008 I believe, late November/early December of 2008,
11 somewhere in there.

12 Q And was that telephone conversation or was that by
13 e-mail or some other means of communication?

14 A (Interposing) They were both.

15 Q And the call was, what, originated by you or by
16 Mr. Zygelman?

17 A By me.

18 Q Okay. You being here in the state of Washington?

19 A Correct.

20 Q And Mr. Zygelman --

21 A (Interposing) Well, excuse me. Yes. Yes, that
22 occurred when I was in Washington.

23 Q And Mr. Zygelman was in the state of California?

24 A I don't know.

25 Q Was it to a phone number that Mr. Zygelman had

1 provided to you?

2 A Yes.

3 Q And do you have any records with you today that
4 reflect what that phone number was?

5 A No.

6 Q Was there one telephone call or more than one
7 telephone call that you had with Mr. Zygelman
8 pertaining to The Only One Mortgage Loan Program?

9 A There was more than one conversation.

10 Q Telephonic?

11 A Yeah, yeah, more than one telephone call, yes.

12 Q And were each of those calls initiated by you?

13 A Correct.

14 Q And were each of those calls initiated by you here in
15 the state of Washington?

16 A I believe so. It is possible that I spoke to him when
17 I was in Fort Washington in February or March of 2009,
18 but I'm not a hundred percent certain if I was in Fort
19 Washington or in Washington state on that
20 conversation.

21 Q Did you have any e-mail communications with
22 Mr. Zygelman pertaining to The Only One Mortgage Loan
23 Program?

24 A Yes.

25 Q And those were initiated by you here in the state of

1 Washington?

2 A Yes.

3 Q And to an e-mail address that Mr. Zygelman had
4 provided to you?

5 A Correct. Well, not provided to me, but provided to
6 GMAC Bank.

7 Q Fair enough. Are you familiar with the terms and
8 conditions contained in The Only One Mortgage Loan
9 Program?

10 A Correct.

11 Q With respect to Exhibit "4," the Construction Loan
12 Agreement, did you have any conversations with
13 Mr. Zygelman regarding this Loan Agreement?

14 A How to answer this. The conversations that I had with
15 Mr. Zygelman were inclusive so if I was talking about
16 the construction loan it was the Construction Loan
17 Commitment, the Construction Loan Agreement, and so
18 yes.

19 Q During your conversations be they oral or be it e-mail
20 that you had with Mr. Zygelman in 2008 and beyond, is
21 it fair to say that you treated Exhibit "3" and "4" as
22 one document?

23 A No. It's not fair to say.

24 Q But you had conversations with Mr. Zygelman in 2008
25 and beyond regarding both Exhibit "3" and Exhibit "4"?

1 A Yes.

2 Q And at the time were you familiar with the terms and
3 conditions contained in Exhibit "4," the Construction
4 Loan Agreement?

5 A Yes.

6 MR. KOEHLER: I don't believe,
7 Mr. Reporter, that that is the correct Exhibit "3," I
8 didn't want you to pick up the wrong document. Since
9 we're going to be one short, I'll provide you with one
10 later. Let me get this out of the way so we don't
11 inadvertently have you pick it up.

12 //

13 Q (by Mr. Koehler) During the time when you were
14 communicating with Mr. Zygelman regarding The Only One
15 Mortgage Loan Program which was marked Exhibit "3"
16 were you overseeing any other such agreements?

17 A Yes.

18 Q And do you recall how many?

19 A Specifically in the state of California or ...?

20 Q I'm sorry, yes, in the state of California.

21 A I don't specifically remember the exact number, but it
22 was probably somewhere around 25, 26.

23 Q Okay. Is that your best estimate?

24 A Yes.

25 Q Okay. Were you also overseeing any like loan programs

1 in states other than California?

2 A Yes.

3 Q And can you give me your best estimate as to the
4 number of those loans?

5 MR. LIU: Objection, it's irrelevant to
6 Mr. Robertson's contacts in California, I'll instruct
7 him not to answer.

8 //

9 Q (by Mr. Koehler) I'm sorry, again, your best estimate
10 as to the number that you were overseeing in the state
11 of California?

12 A Total, yes.

13 Q I'm sorry, what was that number again?

14 A About 25, 26, somewhere in there.

15 Now, clarification: Were all of those the
16 One-Close Fixed Rate Construction Loan, jumbo loans,
17 no.

18 Q Okay. How many were The Only One One-Close Fixed Rate
19 Construction/Permanent Mortgage Loan Program?

20 A (Interposing) I don't recall.

21 Q But were there others other than Mr. Zygelman's?

22 A Oh, yes. Yes.

23 Q Can you give me your best estimate as to the number?

24 A All-in-one jumbos?

25 Q Yes.

1 A Probably maybe five. Six. Maybe six.

2 Q Now, when you contacted Mr. Zygelman I believe you
3 said it was either in November or December of 2008 to
4 discuss this I think you called it an "all-in-one
5 jumbo"?

6 A Correct.

7 Q What was the purpose of you reaching out to him at
8 that time?

9 A To make Mr. Zygelman aware that GMAC Bank was going to
10 have difficulties finding a jumbo takeout loan on his
11 construction and that they had lost the conduit for
12 the secondary market for jumbo loans, the entire jumbo
13 loan market in the United States collapsed at that
14 time.

15 Q Now, these five to six other all-in-one jumbo loans
16 that you were overseeing at the time, did you contact
17 those people?

18 A Yes.

19 Q And was it for the same purpose?

20 A Yes.

21 Q Now, with respect to Exhibit "3" you indicated you're
22 familiar with the terms and conditions of this
23 Agreement, is there anywhere in the Agreement that
24 you're aware of that would allow GMAC to not provide
25 the fixed rate loan that this program calls for?

1 A (Interposing) Yes. I'm sorry, I answered before you
2 were finished.

3 Q That's okay.

4 A Yes.

5 Q Okay. And where is that in this Agreement?

6 A Page one, 1.8, "Important Please Note" and paragraph 9
7 and 10 which is on page 00004, and page 00006 it
8 indirectly is involved Item No. 15.

9 Q When you say "Item 15" --

10 A (Interposing) Well, I'm looking at Number 15, yes.

11 Q Okay. Anywhere else?

12 A Yeah, there is in here, that would be -- and then page
13 00008, Number 25.1, Letter B, sub 1 and subset 2.

14 Q Anywhere else?

15 A No. Not that I can see.

16 Q With respect to Section 1.8, take a moment and read
17 it. And let me know when you complete it.

18 A Okay.

19 Q What language or provision contained in 1.8 do you
20 believe provided GMAC the authority not to make the
21 permanent loan to Mr. Zygelman?

22 A "If you do not complete the construction and meet all
23 of the applicable loan terms to our satisfaction by
24 the construction completion date, Lender shall have
25 the right to charge you a 'delayed construction (sic)

1 surcharge' and/or exercise any of lender's other
2 rights as set forth in Paragraphs 9 and 10 below,
3 including the right to treat the failure to complete
4 construction by such date as a default. Please read
5 these paragraphs carefully." That speaks to it.

6 Q Are you saying that -- what is the completion date?

7 A I believe the scheduled completion date according to
8 the Contract was, what, March 29th -- March 28th -- or
9 excuse me, completion date would have been
10 March 29th, 2009.

11 Q Okay. So in November or December of 2008 that
12 construction completion date had not arrived yet.
13 Correct?

14 A Correct.

15 Q So it would appear that that would not be an
16 applicable reason for denying the permanent loan.
17 Correct?

18 A In December of 2008 we weren't denying the permanent
19 loan. At least I wasn't. I was providing information
20 from the bank to the customers.

21 Q (Interposing) Telling them --

22 A (Interposing) There would not be jumbo financing
23 available. With the market condition and the jumbo
24 market, secondary market hadn't collapsed, no one knew
25 what was going to happen.

1 Q But you told him in that November or December 2008
2 conversation that GMAC would not be making the
3 permanent loan to him. Correct?

4 A Yes.

5 Q Okay. Is there anything else in Section 1.8 that
6 would support GMAC's position not to make the
7 permanent loan to Mr. Zygelman?

8 A Not that I'm aware of.

9 MR. KOEHLER: Let's take a break.

10 THE VIDEOGRAPHER: The time is now
11 approximately 11:58 a.m., we are off the record.

12 (A brief recess was taken.)

13 //

14 (Exhibits "3" and "4" marked
15 for identification.)

16 //

17 THE VIDEOGRAPHER: We are on the record,
18 the time is now approximately 12:09 p.m. This is the
19 beginning of Tape Two on the Deposition of Robbie
20 Robertson.

21 //

22 Q (by Mr. Koehler) Mr. Robertson, referring again to
23 Exhibit "3," Paragraph 9, what language in Paragraph 9
24 do you believe would allow GMAC not to make the
25 permanent loan to Mr. Zygelman?

1 A Nothing in this one. It's referenced -- the reason I
2 called it out is because it's referenced in 1.8.

3 Q And what language in Paragraph 10 you believe would
4 support GMAC's position not to allow the permanent
5 loan to Mr. Zygelman?

6 MR. LIU: I'm going to object. He is
7 currently testifying as to what he told or discussed
8 with Mr. Zygelman back in 2008, 2009, and he's not
9 GMAC Bank or GMAC Mortgage employee and he's not
10 making any representations on behalf of either entity
11 as to why or why not the loan was not converted.

12 //

13 Q (by Mr. Koehler) You testified though that when you
14 contacted Mr. Zygelman in November/December 2008 you
15 told him that GMAC was not going to make the permanent
16 loan to him. Correct?

17 A What I told Mr. Zygelman was that at that time that
18 GMAC Bank could no longer fund jumbo loans and that
19 his jumbo takeout loan would need to be refinanced
20 elsewhere.

21 Q Because they were not going to make it?

22 A Because they could not. It wasn't ...

23 MR. KOEHLER: Now, would you read back
24 my question with regard to Paragraph 10. Or I'll just
25 go ahead and restate it.

- 1 Q (by Mr. Koehler) With respect to Paragraph 10 of
2 Exhibit "3" what language in Paragraph 10 do you
3 believe supports GMAC not having an obligation to make
4 the permanent loan to Mr. Zygelman?
- 5 A It was referenced in 1.8, so the specific of Number 10
6 I have no opinion on.
- 7 Q With respect to Paragraph 15, what language in
8 Paragraph 15 do you believe supports the position that
9 GMAC did not have an obligation or need not make the
10 permanent loan to Mr. Zygelman?
- 11 A No, this was -- and if I said 15 I was erroneous.
12 Number 15 deals with secondary financing meaning if
13 someone who was going to put a second mortgage on the
14 property.
- 15 Q And Mr. Zygelman was not doing that. Correct?
- 16 A Not that I was aware of.
- 17 Q Next with Paragraph 25.1, B as in boy, subparagraph
18 (1), what language in that provision do you believe
19 allowed GMAC not to make the permanent loan to
20 Mr. Zygelman?
- 21 A B (1)?
- 22 Q B (1).
- 23 A "The failure of the loan to fully convert to
24 amortization as described in the commitment letter and
25 in the loan documents through the Lender's CPP ..." --

1 which is Construction Permanent Program --
2 "... Department for any reason." It spells out pretty
3 simple.

4 Q What language in Paragraph 25.1, B as in boy, sub (2)
5 do you believe gave the authority for GMAC not making
6 the permanent loan to Mr. Zygelman?

7 MR. LIU: Objection, the document speaks
8 for itself.

9 You may answer.

10 MR. KOEHLER: I'm waiting for your
11 answer.

12 MR. LIU: You may answer.

13 THE DEPONENT: Oh, I'm sorry. Oh, I'm
14 sorry.

15 //

16 A I'm sorry, can you repeat that because I heard
17 "objection."

18 Q (by Mr. Koehler) Paragraph 25.1, B, sub (2).

19 A Yeah. "The failure of the Borrower to comply with any
20 of the requirements of the Lender necessary to
21 complete disbursement of all of the proceeds under the
22 Note and loan documents or (ii) to permit Lender to
23 successfully deliver the loan for sale in the
24 secondary mortgage market for any reason."

25 Q At the time you first contacted Mr. Zygelman in

1 November or December of 2008 had Mr. Zygelman failed
2 to comply with any of the requirements of the lender
3 at that point in time?

4 A Not that I'm aware of.

5 Q Now, with respect to the five or six other loans, I
6 think you called them all-in-one jumbos.

7 A Uh-huh.

8 THE COURT REPORTER: Please answer yes
9 or no.

10 THE DEPONENT: I'm sorry.

11 //

12 A Yes.

13 MR. KOEHLER: Thank you.

14 //

15 Q (by Mr. Koehler) Is there a record somewhere of who
16 the borrowers were of those five to six loans?

17 A I'm sure there is.

18 MR. LIU: I'll object to the extent
19 that -- no, I'll withdraw my objection.

20 //

21 Q (by Mr. Koehler) And do you know where those documents
22 would be?

23 A No.

24 Q When did you leave the employment of GMAC?

25 A (Interposing) December -- excuse me. You need to

1 finish, I'm sorry.

2 Q When did you leave the employment of GMAC?

3 A December 31st, 2009.

4 Q And at that point in time do you know who took over
5 your duties, if anybody?

6 A Yes.

7 Q Who?

8 A Tom Webster and Rick Smith.

9 Q Now, looking again at Exhibit "3," when was this loan
10 made to Mr. Zygelman?

11 A According to the document it funded at Commitment
12 Acceptance Date is March 15th, 2008. Or it could
13 possibly have been the Commitment Expiration Date is
14 3/28/08. So sometime in that time frame.

15 Q Now, at that time are you aware if GMAC had any
16 written advertisements available to the public
17 regarding this what you referred to is all-in-one
18 jumbo loan?

19 MR. LIU: Objection, exceeds the scope
20 of the discovery with respect to the Motion to Quash.
21 I instruct him not to answer.

22 MR. KOEHLER: If there are provisions in
23 the other loan commitments or provisions as to the
24 Bank's commitment and those advertisements, I would
25 think we would have the right to see those at this

1 point in time because it might discuss how loans were
2 made, were they being made in California, were they
3 being made in Oregon, were they a national program, a
4 regional program.

5 MR. LIU: No, I disagree. I think
6 whatever GMAC Bank did as a policy as a business has
7 no bearing on Mr. Robertson's connection with
8 California. If the question was what Mr. Robertson
9 may have advertised individually, personally, on
10 behalf of GMAC Bank I think that would be a more fair
11 question.

12 MR. KOEHLER: Now, Mr. Robertson, I know
13 Mr. Liu is appearing specially here for you today and
14 for this limited purpose as your attorney and I know
15 he has instructed you not to answer certain questions,
16 but I want to make you aware if at a later time we
17 want to take what will be the second installment of
18 your deposition and for any reason there is a refusal,
19 we have the right to make a Motion to Compel and as
20 part of that Motion to Compel we have the right to
21 seek monetary sanctions. So with that in mind are you
22 still prepared not to answer the question?

23 MR. LIU: I will maintain my objection
24 and ask Mr. Robertson not to answer the question as
25 currently phrased.

1 MR. KOEHLER: Is that your position,
2 Mr. Robertson?

3 THE DEPONENT: According to the
4 attorney, I will rely on the advice of my attorney.

5 //

6 Q (by Mr. Koehler) Now, during the course of your
7 employment with GMAC did you see any advertisements
8 regarding this One jumbo loan?

9 A Can you clarify "advertisements"?

10 Q Newspaper articles, ...

11 A No.

12 Q (Continuing) ... flyers?

13 A No.

14 Q Any written propaganda from GMAC to people like
15 yourselves that were servicing these loans?

16 A I'm not -- can you rephrase it or clarify it, I'm not
17 sure what you're trying to get at here.

18 Q In 2008 how would one know of this type of loan that
19 was being made by GMAC; when I say "this type of loan"
20 I'm referring to such as that as Exhibit "3"?

21 A GMAC had a national GMAC mortgage retail lending
22 operation and loan officers who did regular mortgage
23 loans and also construction loans.

24 MR. LIU: I'll object again that the
25 question goes to GMAC Bank's policies and business

1 practices which aren't within the scope of the
2 Complaint or the Cross-Complaint and it's outside the
3 scope of the Motion to Quash and on that basis, on
4 those bases, I'll instruct Mr. Robertson not to
5 answer.

6 //

7 Q (by Mr. Koehler) Were any of these offices in
8 California?

9 A Yes.

10 Q And did you see any advertisement type material that
11 they were providing to potential borrowers?

12 MR. LIU: I'm going to assert the exact
13 same objection so I won't have to repeat it.

14 And instruct you not to answer.

15 MR. KOEHLER: Again, we're talking about
16 California, advertisements circulated in California.

17 MR. LIU: If there were phone calls or
18 advertisements that Mr. Robertson himself made within
19 the state of California, that's fair, but not as to
20 GMAC Bank or GMAC Mortgage as a whole.

21 MR. KOEHLER: Well, I respectfully
22 disagree. And I mean if you're going to instruct him
23 not to answer, I can't force him to answer.

24 But you know there can be repercussions for your
25 failure to answer.

1 THE DEPONENT: Well, I have to go with
2 the advice of my attorney.

3 //

4 Q (by Mr. Koehler) During the course of employment with
5 GMAC did you ever make an all inclusive One jumbo
6 loan?

7 A No.

8 Q The five to six other all inclusive One jumbo loans
9 that you oversaw, had those loans already been made at
10 the time that you became employed at GMAC?

11 A I have no idea.

12 Q Did you make any of those loans?

13 A No.

14 Q During your employment with GMAC did you maintain any
15 type of a manual as to how the One jumbo loans were to
16 be administered?

17 A Yes.

18 Q And what was that document called?

19 A The Construction Lending Manual.

20 Q And was that a manual to your understanding specific
21 to a Regional Construction Sales Manager in the state
22 of Washington or was that for retail construction
23 sales managers nationwide?

24 A Nationwide.

25 Q Do you know if that Construction Lending Manual still

1 exists?

2 A I have no idea.

3 Q Now, per the terms of Exhibit "3" aside from your
4 conversations that you had with Mr. Zygelman in
5 November/December 2008, this type of loan was designed
6 to convert a construction loan to a permanent loan?

7 A Correct.

8 Q And what were the terms of that permanent loan, such
9 as what were the number of years: Are we talking about
10 a 10 year loan, a 20 year loan?

11 MR. LIU: And I'll object to the extent
12 that you know it's a general question as to all loans.
13 He can answer with respect to Mr. Zygelman's loan.

14 MR. KOEHLER: That's what I'm talking
15 about, Mr. Zygelman's loan.

16 MR. LIU: He can answer.

17 //

18 A If I can clarify. Mr. Zygelman had a 30-year fixed
19 rate jumbo loan commitment with a 12 month
20 construction term at the front of the loan which mean
21 that upon the completion of the house or completion of
22 the project within that one year period the loan would
23 then convert to its permanent financing for the
24 remaining 29 years. So the amortization of the
25 amortized payment would be based on 29 years.

1 Q (by Mr. Koehler) Other than the provisions in
2 Exhibit "3" that you have already testified to is
3 there any other language in the one -- I'm sorry, I
4 forget what you referred to it -- all inclusive One
5 jumbo that would preclude this loan converting from a
6 construction loan to a permanent loan?

7 MR. LIU: Objection, the document speaks
8 for itself.

9 You can answer.

10 //

11 A In the Commitment, Fixed Rate Loan Commitment, is this
12 the one we're referencing there? We'll go to page
13 0004, Section 8, Delays In Completion, line 8.5,
14 "Lender may determine instead that it does not wish to
15 permit more time for construction, and it shall have
16 no obligation to do so. If Lender determines not to
17 extend the time for completion, it shall be a material
18 and actionable default under the loan documents which
19 may result in acceleration of the loan balance and
20 foreclosure."

21 Q (by Mr. Koehler) And that is ...

22 A 8.5.

23 Q And that pertains to if there is a delay in
24 completion.

25 A Correct.

1 Q What was the completion date of this loan?

2 A When was the house completed?

3 Q No. What was the completion date stated for this
4 loan?

5 A 3/29, I believe, of 2009.

6 Q Did you oversee Mr. Zygelman's loan from its date of
7 inception?

8 A No.

9 Q Who was your predecessor in overseeing this loan?

10 A I have no idea. And the individual, I don't remember,
11 I believe his name was Jim but I don't recall his last
12 name.

13 THE VIDEOGRAPHER: Mr. Robertson, please
14 be mindful of the microphone.

15 //

16 Q (by Mr. Koehler) I will provide you with what we'll
17 mark as Exhibit "5". (Handing)

18 (Exhibit No. "5" marked for
19 identification by Reporter.)

20 //

21 Q (by Mr. Koehler) What I've handed you are Special
22 Interrogatories that were propounded by Mr. Zygelman
23 to GMAC Mortgage, LLC and formerly known as GMAC
24 Mortgage Corp, and direct your attention to Question
25 Number One.

1 MR. LIU: I'm going to object that this
2 Exhibit is with respect to discovery propounded on
3 GMAC Mortgage, LLC which currently is bankrupt and
4 he's not going to respond to any discovery and it
5 appears -- this is not directed to Mr. Robertson and
6 it appears to be outside the scope of his Motion to
7 Quash.

8 MR. KOEHLER: I can ask.

9 MR. LIU: But please, if you want to ask
10 a followup question.

11 MR. KOEHLER: I will.

12 //

13 Q (by Mr. Koehler) Would you read Number One.

14 A "Is it your contention that, pursuant to the terms of
15 Cross-Complainant's One-Close Fixed Rate
16 Construction/Permanent Mortgage Loan Agreement, a copy
17 of which is attached hereto as Exhibit '1', you had no
18 obligation to convert Cross-Complainant's construction
19 loan to a conventional jumbo loan upon completion of
20 construction?"

21 MR. LIU: And I'll object again that
22 this Exhibit and any definition of "your" relates to
23 GMAC Mortgage, LLC and not to Robbie Robertson. And I
24 guess we'll see where the next question goes.

25 //

1 Q (by Mr. Koehler) Next I'm going to show you what is
2 Exhibit "6," Responses to that.
3 (Exhibit No. "6" marked for
4 identification by Reporter.)

5 //

6 MR. LIU: And I'm going to object again
7 that Exhibit "6" is Defendant GMAC Mortgage, LLC's
8 responses to Mr. Zygelman's Special Interrogatories
9 Number One, they're not directed at Mr. Robertson and
10 Mr. Robertson did not verify these discovery
11 Responses.

12 MR. KOEHLER: So noted.

13 //

14 Q (by Mr. Koehler) Go ahead and read to yourself the
15 response to Special Interrogatory No. 1. Let me know
16 when you're done.

17 A Okay.

18 MR. LIU: I'm going to object. The
19 Interrogatory Response is by GMAC Mortgage, he has no
20 personal knowledge, he did not verify this, did not
21 sign the document, has absolutely no personal
22 knowledge of the Response made by GMAC Mortgage. And
23 I'll see what the next question is.

24 MR. KOEHLER: Okay.

25 //

1 Q (by Mr. Koehler) Mr. Robertson, do you concur in
2 GMAC's response that the loan did not convert due to
3 the fact that Mr. Zygelman was in default in that he
4 did not complete construction by February 26, 2009?

5 A I agree that he did not complete construction by
6 February 26, 2009.

7 Q And that was after the date in which you first
8 notified him that GMAC was not going to make the
9 permanent loan. Correct?

10 A Correct. February came after December.

11 Q On any of these One Fixed jumbo loans that you handled
12 were any of them completed?

13 A Yes.

14 Q And how many?

15 MR. LIU: Objection, it goes outside the
16 scope of Mr. Robertson's Motion to Quash.

17 MR. KOEHLER: For the record, any
18 questions that are objected to and/or Mr. Liu has
19 instructed the deponent not to respond I certainly do
20 not waive the right to re-ask that question when and
21 if there is a second session of Mr. Robertson's
22 deposition.

23 MR. LIU: I understand and I'm
24 instructing him not to respond because it's outside
25 the scope of the Motion to Quash at this time.

1 THE DEPONENT: Can I retract that last
2 "Yes" because the word that he used was not correct.

3 MR. LIU: We'll leave it right now and
4 if Mr. Koehler wants to rephrase his question or seek
5 clarification he may.

6 //

7 Q (by Mr. Koehler) Next I'll show you what we'll mark as
8 Exhibit "7".

9 (Exhibit No. "7" marked for
10 identification by Reporter.)

11 //

12 Q (by Mr. Koehler) Mr. Robertson, does this appear to be
13 a GMAC Mortgage Statement for 4/19/10? (Handing)

14 A That's what it appears to be, yes.

15 MR. LIU: Objection, the document speaks
16 for itself.

17 //

18 Q (by Mr. Koehler) Was Mr. Zygelman in default at this
19 point in time?

20 A I'm not aware. Well, I'm not aware, I wasn't an
21 employee at the time.

22 Q I'm sorry, when did you leave employment of --

23 A (Interposing) December 31, 2009.

24 Q How did you become aware that GMAC was no longer going
25 to make permanent loans such as that stated in

1 Exhibit "3"?

2 MR. LIU: And objection to the extent
3 that it would invade any attorney-client privilege.

4 You can answer, but don't answer with respect to
5 any information you received from GMAC's inside or
6 outside counsel.

7 //

8 A Could you restate the question please?

9 Q Sure.

10 MR. KOEHLER: Mr. Reporter.

11 (Question read by Reporter:

12 "Question: How did you
13 become aware that GMAC was
14 no longer going to make
15 permanent loans such as that
16 stated in Exhibit '3'?"

17 //

18 MR. LIU: I reassert the same objection.

19 Be careful not to respond with any communications
20 you had with GMAC inside or outside counsel; but if
21 there are any communications you had with any GMAC
22 non-legal people, then you can answer.

23 //

24 A Oh, Rick Smith informed us that there was going to be
25 discussions regarding the continuance of the

1 Construction Lending Programs.

2 Q (by Mr. Koehler) And did he convey this to you orally
3 or in writing?

4 A Orally.

5 Q Was it followed up with any type of written
6 memorandum?

7 A No.

8 Q And when did he inform you so orally?

9 A I don't remember.

10 Q Can you give me your best estimate?

11 A Probably sometime around -- it had to be sometime
12 around June or July of 2008. Could have been as early
13 as August. I just honestly don't recall.

14 Q Is there some reason then that you waited until
15 November 2008 to inform Mr. Zygelman that GMAC was not
16 going to convert the construction loan to a permanent
17 loan?

18 A My conversations with Mr. Smith were not definitive
19 that GMAC Bank was going to close down the
20 Construction Lending Department. I had discussions
21 with him that there was concerns about the
22 construction lending relative to -- excuse me --
23 relative to the economic downturn across the United
24 States.

25 Q When did it become determinative?

1 A And I believe that was -- it had in that August -- no,
2 let's see, it had to have been October/November, yeah,
3 it had to have been sometime around October/November.
4 I honestly don't remember the dates, that was a long
5 time ago.

6 Q And how did you become aware that it was
7 determinative?

8 A Orally by through Rick Smith.

9 Q And did he follow it up with any type of written
10 memorandum?

11 A Not that I can recall.

12 (Exhibit No. "8" marked for
13 identification by Reporter.)

14 //

15 Q (by Mr. Koehler) I'm going to direct your attention to
16 the e-mail dated August 26th, 2009, appears to be from
17 you to Mr. Zygelman. Do you recall this
18 communication?

19 A (Interposing) Yes. Yes.

20 Q Would you look at the second sentence.

21 THE VIDEOGRAPHER: Is that marked as
22 Exhibit "8"?

23 MR. KOEHLER: I'm sorry, yes,
24 Exhibit "8".

25 //

1 A Okay.

2 Q (by Mr. Koehler) It refers to conversations with
3 Mr. Zygelman commencing September 2008 that he needed
4 to secure financing elsewhere. Does that maybe
5 refresh your memory as to when you first --

6 A (Interposing) Yeah. Yeah, that's probably about
7 correct.

8 Q Again, let me finish my question. For the most part
9 you're doing good. So just keep that in mind.

10 Do you recall when in September that you may have
11 notified him?

12 A No.

13 Q Do you believe that to be the first date that you
14 notified him that GMAC was not going to be converting
15 the construction loan to a permanent loan?

16 A In September of 2008, it states and it says here that
17 that's when it was and my memory is going to rely on
18 my e-mail.

19 Q And Mr. Zygelman was not in default to your knowledge
20 of his construction loan at that time?

21 A No.

22 Q Next show you a document we'll mark as Exhibit "9".

23 (Exhibit "9" marked for
24 identification by Reporter.)

25 //

1 Q (by Mr. Koehler) This e-mail appears to be dated
2 August 18th, '09 and it appears to be from you to
3 Mr. Zygelman. Do you recall this?

4 A Yes.

5 MR. LIU: And I'll object to the extent
6 that the document is not complete. At the bottom of
7 the page of Exhibit "9" there is an e-mail and it
8 appears to be from Mr. Zygelman to Mr. Robertson, the
9 text of that e-mail is not contained within
10 Exhibit "9".

11 MR. KOEHLER: Right. There is no
12 question intended as to that incomplete portion. The
13 question only is to the August 18th, 2009
14 correspondence.

15 MR. LIU: You can answer.

16 //

17 A I'm sorry, I was spacing out. Could you repeat that
18 please.

19 MR. KOEHLER: I'm not sure I completed
20 the question.

21 Go ahead and read it.

22 (Last question and answer
23 read by Court Reporter.)

24 //

25 Q (by Mr. Koehler) Now, it appears from this e-mail that

1 you were explaining to him that in November of '08
2 GMAC was not converting the loan due to the fact that
3 there was no longer a secondary market. Correct?

4 A Correct.

5 Q So the reason for not converting it was not because he
6 was in default but because there was no secondary
7 market?

8 A I'm not qualified to answer that. That's a policy
9 issue that I'm not qualified to make.

10 Q Well, I mean you told him that there was no secondary
11 market.

12 A Correct. And in response if the Bank hadn't been able
13 to secure and the economy turned and the jumbo market
14 came back and the Bank came back and said otherwise.
15 So it becomes a company policy issue, not a decision
16 on my part.

17 Q But at that point in time, November of '08, GMAC had
18 taken a position that they were not going to convert
19 Mr. Zygelman's construction loan to a permanent loan.
20 Correct?

21 MR. LIU: Objection, the document speaks
22 for itself.

23 You can answer.

24 //

25 A Yes. GMAC made the determination that they would not

1 have a secondary market for their jumbo loan
2 conversions.

3 Q (by Mr. Koehler) Now, during that period let's say
4 from September to November of 2008 what was the real
5 estate market like for obtaining loans for new homes
6 which let's say had a loan amount of over one million
7 dollars?

8 MR. LIU: Objection, that calls for an
9 expert opinion.

10 MR. KOEHLER: He's an expert, that's
11 what he did.

12 MR. LIU: I don't agree.

13 THE DEPONENT: I don't think so. I mean
14 I'm not a loan officer. I did not make the loans. I
15 managed construction projects.

16 MR. KOEHLER: Okay.

17 //

18 Q (by Mr. Koehler) And you oversaw loans. Correct?

19 A No, sir.

20 Q You oversaw construction contracts.

21 A Yes, sir.

22 Q Okay. Now, do you know what the market was like in
23 September to November of 2008?

24 MR. LIU: Same objection, that's asking
25 for expert testimony.

1 A It was a declining market.

2 Q (by Mr. Koehler) And the reason why there was no
3 secondary market?

4 A I do not know.

5 Q Now, do you recall advising Mr. Zygelman that upon him
6 obtaining Certificate of Occupancy upon the completion
7 of the home you would disburse \$11,000 to him from his
8 Construction Loan Account?

9 A No. That was never stated.

10 Q I'll show you a document we'll mark as Exhibit "10".

11 THE DEPONENT: (to Mr. Liu) This is
12 bogus.

13 (Exhibit No. "10" marked for
14 identification by Reporter.)

15 //

16 Q (by Mr. Koehler) Have you reviewed it looks to be an
17 e-mail from a Mark Taylor to you dated
18 August 12th, 2009; do you recall who Mark Taylor was?

19 A Yes.

20 MR. LIU: I'll object, the document
21 speaks for itself.

22 //

23 Q (by Mr. Koehler) Who was Mark Taylor?

24 A Mark Taylor was the contractor that pounded the nails
25 in the house.

1 Q And after reviewing this document does it change your
2 recollection as to what you may or may not have said
3 to Mr. Robertson (sic) concerning the release of
4 \$11,000 from his construction loan?

5 A Absolutely. Because one of the things you're
6 forgetting here, Counsel, is the followup e-mail in
7 which I dispute Mr. Taylor's assertions because he did
8 not hear the conversation. The conversation directly
9 related to the final draw would be disbursed upon
10 completion of the house and a Certificate of Occupancy
11 which is spelled out very clearly in the Construction
12 Loan Agreement. Completion of the house and
13 Certificate of Occupancy; not completion or
14 Certificate. Both.

15 Q And are you saying that both did not occur?

16 A Correct.

17 Q Which did not occur?

18 A The completion of the house.

19 Q But the Certificate of Occupancy was issued. Correct?

20 A Yes.

21 Q Now, is it your contention that this conversation with
22 Mr. Zygelman pertaining to the release of \$11,000 did
23 not occur?

24 A No. No, it occurred but it's not being framed
25 correctly. If you go into the documents you will see

1 clearly completion of the house and Certificate of
2 Occupancy. A Certificate of Occupancy deals with
3 health, safety and environment. So you can have a lot
4 of work that's not completed in a job that does not
5 reference health, environment or welfare and that was
6 the case, house wasn't completed.

7 Q And how do you know this?

8 A Final inspection performed by Granite Inspection
9 Company with pictures.

10 Q And do you have any recollection as to what was not
11 completed?

12 A Yeah, I don't have the construction draws and line
13 items in front of me, but -- so I don't know how to
14 answer that because I'm not a hundred percent certain.

15 Q Okay. To the best of your recollection what was not
16 complete?

17 A I can't answer because I honestly don't recall, but
18 just my knowledge of construction more than likely
19 trim finishing work, installation of carpets, tiles,
20 this kind of thing, appliances, doorknobs, hardware,
21 screens, you know.

22 MR. LIU: I'll just assert an objection.
23 It sounds like Mr. Robertson is speculating, he
24 doesn't have any personal knowledge with respect to
25 the Zygelman residence.

1 Q (by Mr. Koehler) I believe the question was to the
2 best of your recollection.

3 A And like I said I'm not a hundred percent certain.

4 Q But the fact of the matter is the \$11,000 was never
5 released to Mr. Zygelman?

6 A I was not aware of that. It was not disbursed on the
7 final draw. Had it ever been disbursed to him, I'm
8 not aware of it whether it was or wasn't.

9 Q Now, was Mr. Webster your direct supervisor or was it
10 Mr. Smith, or both?

11 A Both.

12 Q And I'm sorry, you said Mr. Smith is no longer with
13 the Bank?

14 A Correct.

15 Q And do you know if he's still in the banking industry?

16 A I have no idea.

17 MR. LIU: (Interposing) Objection,
18 irrelevant, exceeds the scope of the Motion to Quash
19 and I'll instruct him not to answer.

20 MR. KOEHLER: Well, actually it is
21 relevant because Mr. Smith or Mr. Webster may be able
22 to provide testimony regarding what Mr. Robertson's
23 duties were as it pertains to California real estate,
24 California loans and contacts that he had contrary to
25 what Mr. Robertson may be telling us. So I think

1 based upon that, that is relevant.

2 MR. LIU: Then that's fine.

3 You may answer.

4 //

5 A And the question was again?

6 Q (by Mr. Koehler) To your knowledge is Mr. Smith still
7 in the banking industry?

8 A I don't know.

9 Q Did you have any type of social relationship with
10 Mr. Smith?

11 MR. LIU: Objection, I don't see the
12 relevance of that question.

13 MR. KOEHLER: That's a foundational
14 question.

15 //

16 A You mean like did we go out to lunch or out to dinner
17 after work?

18 Q (by Mr. Koehler) Yes.

19 A Yeah.

20 Q Did you stay in contact with Mr. Smith?

21 A No.

22 Q Do you know where he resides?

23 A I'm assuming he's in Massachusetts, that's where he
24 lived; I don't know where, but I'm assuming he's still
25 back there.

1 Q I think you referred to him as Rick Smith?

2 A Correct.

3 Q Would his first name actually be Richard?

4 A I would assume so, but I'm not a hundred percent
5 certain.

6 Q Okay. Mr. Webster no longer works for GMAC?

7 A As far as I know, yes, he no longer works.

8 Q Do you know when he left?

9 A No.

10 Q Did you maintain any type of social relationship with
11 Mr. Webster?

12 A No.

13 Q Do you know where Mr. Webster resides?

14 A When I left GMAC he was living down in Arizona and I'm
15 assuming he's still in Arizona.

16 Q Do you know where in Arizona?

17 A No, sir. I'm sure it's in the Greater Phoenix area
18 somewhere.

19 Q Now, at the time that you informed Mr. Zygelman that
20 his construction loan was not going to be converted to
21 a permanent loan I believe you told him that the Bank
22 would waive the charge of him going to an outside
23 lender. Correct?

24 A Absolutely. Yes.

25 Q And who authorized this?

1 MR. LIU: And I'll object.

2 And just be careful not to make any statement or
3 release any information with respect to any
4 conversation you may have had with any inside or
5 outside counsel with GMAC.

6 THE DEPONENT: Correct.

7 //

8 A The waiver, that was verbally related to me by Tom
9 Webster via -- from what I'm assuming -- via Rick
10 Smith.

11 Q (by Mr. Koehler) Now, was Rick Smith Tom Webster's
12 immediate superior?

13 A Correct.

14 Q I'm going to next show you a document we'll mark as
15 Exhibit "11" and ask if you've seen this before?
16 (Handing)

17 A Correct.

18 (Exhibit No. "11" marked for
19 identification by Reporter.)

20 //

21 Q (by Mr. Koehler) Now, looking at the second bullet
22 point -- do you know what I mean by "bullet point"?
23 Do you know what I mean by when I refer to as "second
24 bullet point"?

25 A Yeah.

1 Q Okay. If you would look at the second bullet point.
2 Now, is this referring to the permanent loan that was
3 referenced in Mr. Zygelman's Only One Loan?

4 MR. LIU: I'll object. This letter is
5 not from Mr. Robertson to anyone and it's not
6 addressed to Mr. Zygelman, so it looks -- I assume
7 Mr. Zygelman received it, but it looks like a document
8 from GMAC Bank and not from Mr. Robertson.

9 //

10 Q (by Mr. Koehler) Had you seen this document prior to
11 today?

12 A No. Well, no, let me see, I think it came in your --
13 it came in some of your legal documents.

14 Q Let me rephrase the question.

15 During the time that you were employed at GMAC
16 did you see this document?

17 A No. No, I didn't.

18 Q Prior to your being notified in and around September
19 of 2008 that GMAC would not convert Mr. Zygelman's
20 construction to a permanent loan to your knowledge was
21 GMAC committed to making that permanent loan?

22 A I'm sorry, you're going to have to clarify that one
23 please.

24 Q Actually let me withdraw it, that wasn't a very good
25 question.

1 Prior to September of 2008 when you were notified
2 by your superior that Mr. Zygelman's construction loan
3 would not be converted to a permanent loan were there
4 any reasons that would have precluded GMAC from making
5 the permanent loan to Mr. Zygelman?

6 A Well, first of all I was never informed of a specific
7 client or a specific customer who would not be
8 converted. It was a blanket policy established by
9 GMAC Bank. So I never had a direct reference by GMAC
10 Bank to specifically address Mr. Zygelman's loan.

11 Q I may have asked you this before. Did Mr. Smith
12 maintain an office?

13 A Yes.

14 Q Where was his office?

15 A Fort Washington.

16 Q Pennsylvania?

17 A Pennsylvania, yes.

18 Q And did Mr. Webster maintain an office?

19 A Yes.

20 Q And where was his office?

21 A Phoenix, Arizona.

22 Q To your knowledge did Mr. Webster during the course of
23 your employment with GMAC travel to California to
24 interact with any borrowers?

25 MR. LIU: Objection, it appears

1 irrelevant to the allegations in the Complaint and
2 Cross-Complaint and clearly outside the Motion to
3 Quash with respect to any conduct by Mr. Webster to
4 any GMAC borrower located in California. If that's a
5 foundational question, if you've something to followup
6 with, but I don't see how Mr. Webster's conduct would
7 be relevant.

8 MR. KOEHLER: Okay. Your objection is
9 noted.

10 You can go ahead and answer the question.

11 //

12 A I'm not aware, I don't know if he had any interaction
13 with clients or not.

14 Q (by Mr. Koehler) During your tenure with GMAC Mortgage
15 did you ever communicate with Mr. Webster during any
16 period he may have been in California?

17 A No.

18 Q During your tenure with GMAC did you have any
19 communication with Mr. Smith where he may have been in
20 California?

21 A Excuse me, if I can back up to the previous question
22 about Mr. Webster.

23 Q Mr. Webster?

24 A In 2007 we did a training program with about a hundred
25 loan officers in which Mr. Webster and I were both in

1 attendance, but that was down in Irvine, California.
2 And that was in 2007.
3 Q And you traveled to Irvine, California for the purpose
4 of putting on this training program?
5 A Correct.
6 Q So you were one of the trainers?
7 A Correct.
8 Q On behalf of GMAC.
9 A Correct.
10 Q And Mr. Webster was there as well?
11 A Correct.
12 Q And who were you training?
13 A Retail loan officers that were selected by GMAC
14 Mortgage to attend it.
15 Q And were these loan officers that would be making the
16 loans such as the One-Close Fixed Rate
17 Construction/Permanent Mortgage Loan?
18 A Well, it would be within their purview to do so, yes.
19 Q And how long was this --
20 A (Interposing) One day.
21 Q (Continuing) -- conference?
22 A One day. Oh, excuse me, one-and-a-half days, I did
23 stay the night and we had a followup session in the
24 morning, so one-and-a-half days.
25 Q Other than that event during your tenure with GMAC

1 Mortgage did you ever travel to California to either
2 to attend any conferences or conventions involving
3 GMAC Mortgage -- GMAC?
4 A (Interposing) No. No.
5 Q What was the conversion date for Mr. Zygelman's loan?
6 A The contracted?
7 Q Yes.
8 A He was to have converted, he was to have had the home
9 completed, completed, and the Certificate of Occupancy
10 and the final closeout of paperwork on or before
11 March 29, 2009.
12 Q If you will look at Exhibit "3," Paragraph 14.1, and
13 in particular the first sentence?
14 A I'm sorry ...
15 Q 14.1?
16 A Hazardous materials?
17 Q No.
18 A I'm sorry, I'm looking at the wrong one.
19 Q This one (indicating).
20 A That's the one, I'm sorry. You guys cut enough trees
21 down to do all this.
22 MR. LIU: I have two objections: One,
23 the document speaks for itself; and, Two, again
24 Mr. Robertson can only testify to his personal
25 knowledge, he did not draft or enter into this

1 agreement personally with Mr. Zygelman.

2 MR. KOEHLER: I understand that,
3 Counsel.

4 MR. LIU: You may answer.

5 //

6 A "You agree that the value of the property may be
7 re-certified prior to the conversion of the loan to
8 the Amortization Period at Lender's option."

9 Q (by Mr. Koehler) Do you know what the Lender is
10 referring to when they speak of "conversion of the
11 loan to the Amortization Period"?

12 A Yes.

13 Q What is that?

14 A As I previously mentioned these loans are in this case
15 a 30-year loan with a 12-month construction period,
16 thereby leaving an Amortization Period for the full
17 repayment of the debt of 29 years.

18 Q Was Mr. Zygelman granted any extensions of this loan?

19 A Yes.

20 Q Okay. Do you recall when the first such extension
21 took place?

22 A March 29th, 2009, I believe, it was either that or
23 right close to that date. It appears like that was
24 executed on the 10th of -- excuse me, were signed by
25 the borrower on March 6th of 2009.

1 Q Again looking at Paragraph 14 of Exhibit "3," the term
2 "re-certified," do you know what that means?

3 A Yes.

4 Q What?

5 A We have the appraiser that did the original appraisal
6 for value consideration go out and re-certify it
7 through market analysis that the value remains the
8 same or better, or if not then there's no
9 re-certification.

10 Q Would this be done one time during the loan period or
11 multiple times?

12 A No, it would be done at completion and conversion at
13 the lender's option.

14 Q Regarding GMAC's policy not to convert construction
15 loans to permanent loans such as that given to
16 Mr. Zygelman, was there ever anything put in writing
17 regarding that policy?

18 MR. LIU: Objection to the extent that
19 it seeks a broad policy that affects other borrowers
20 other than Mr. Zygelman. But if he knows of any
21 written policy with respect to Mr. Zygelman, he may
22 answer.

23 //

24 A I have no knowledge.

25 Q (by Mr. Koehler) During your employment with GMAC did

1 you have occasion to come to California regarding any
2 business on behalf of GMAC?

3 A Yes.

4 Q Other than the conferences that you attended?

5 A Yes.

6 Q How many times?

7 A Once.

8 Q When was that?

9 A I believe it was in latter part of June of 2008.

10 Q And the purpose for your trip?

11 A Was to do site inspections on several abandoned
12 construction properties and a couple of properties
13 that were in severe default.

14 Q Were they in any specific geographic location?

15 A Forgive me on the names, Brownville, is that north of
16 Sacramento? Brownsville or something. There was one
17 north of Sacramento, a couple over in Petaluma, one in
18 Santa Rosa, and three in the San Jose area with one --
19 I can never remember the name, it starts with an "A"
20 somewhere between San Jose and San Francisco that was
21 just a raw piece of land. So that's it.

22 Q Do you recall about how many sites that you looked at?

23 A Six or seven.

24 Q And how long were you in California?

25 A One day. Well, excuse me, one day and a morning, so I

1 stayed the night, and stayed the night in Petaluma and
2 went to Oakland the next morning, did my final
3 inspection and took a plane home.

4 Q And did anyone accompany you?

5 A No.

6 Q When again was that trip?

7 A I believe it was in June of -- the latter part of June
8 2008.

9 Q While in California did you have any communication
10 with Mr. Zygelman?

11 A No.

12 Q Did you have occasion to visit the site of the
13 Zygelman construction site?

14 A No.

15 Q At the time that you left employment of GMAC do you
16 recall how much money, if any, was left in the
17 Zygelman Construction Loan Account?

18 A No.

19 MR. KOEHLER: I think at this time I'll
20 pass to Mr. Barbag.

21 //

22 //

23 //

24 //

25 //

1 QUESTIONING BY MR. BARBAG:

2 Q Mr. Robertson, as I introduced earlier, my name is
3 Scott Barbag, I represent Hayomyom. How are you
4 doing?

5 A I'm very well, thank you.

6 Q I'm going to try not to repeat Counsel's questions but
7 I might and I apologize if I do. While working for
8 GMAC did you ever create any documents from business
9 dealings in California?

10 A I'm sorry, did I what?

11 Q Create any documents.

12 A Create any documents? No.

13 Q Okay. And I was using that term a little bit broadly
14 so let me define it. When I'm saying "documents" I'll
15 say e-mails, facsimile, any other correspondence that
16 you may have, any of that. Let me re-ask again.

17 Did you ever send any e-mails to California while
18 you worked for GMAC?

19 A Yes.

20 Q Okay. Can you estimate approximately how many?

21 A No. I have no idea.

22 Q Would you say it's over 500?

23 A No.

24 Q You worked for GMAC approximately two and
25 three-quarter years?

1 A Correct.

2 Q Would you say the number of e-mails sent to California
3 were over 100?

4 A Possibly.

5 Q So less than 500, over 100. Can you narrow the range
6 a little bit?

7 A I'm sorry, I have no knowledge of how many e-mails I
8 sent three years ago, four years ago, I really don't.
9 It would be -- I will answer it this way: It would be
10 a limited number be as I mentioned already previously
11 on draw inspections, okay, I would send e-mail to the
12 customer and the builder on a monthly basis letting
13 them know the results of the inspection, sending
14 copies of a Lien Waiver form, sending copies of the
15 validated site inspection so that we would have a
16 record of what line items were going to be drawn out.
17 So each month I probably sent an e-mail to each
18 customer at least.

19 Q And there are at least 25 customers?

20 A Well, somewhere around 25.

21 Q Were those customers throughout your entire tenure
22 while you were with GMAC?

23 A No.

24 Q What was the smallest amount of customers you had at
25 any one time in California while you were working with

1 GMAC?

2 A The smallest amount? I have no idea. The smallest
3 amount? I don't know. I honestly don't know.

4 Q Did you ever have less than 10 customers in California
5 while with GMAC?

6 A (Interposing) I don't believe so.

7 Q So it's fair to say that if you were sending monthly
8 e-mails to these people in California you sent at
9 least 120 e-mails.

10 A I'll accept that.

11 Q Would that be the same for facsimile or other mailed
12 correspondence? Would you followup your e-mails with
13 a facsimile?

14 A Not as a general rule, no.

15 Q Would you followup your e-mails with mailed
16 correspondence?

17 A As a general rule, no.

18 Q So generally when corresponding with people in
19 California it would be either telephonic or e-mail.

20 A Correct.

21 Q Okay. Do you know who would have a copy of any of
22 your e-mails that you sent to California?

23 A (Interposing) I have no idea.

24 Q And as I recall your answer to Counsel's question, you
25 were in California during your tenure with GMAC for

1 business purposes with GMAC only twice. Is that
2 correct?

3 A Correct.

4 Q And again, I prepared in anticipation of some answers
5 and so I'm trying to not repeat some questions. And
6 in 2007 you stayed about one-and-a-half days. Is that
7 right?

8 A Correct.

9 Q During the 2007 loan construction training were you
10 one of the trainers for the entire time, for the full
11 one-and-a-half days, or were you part of the audience
12 during that time?

13 A Well, there was four -- how do I explain this. There
14 was a training seminar at which there was four of us
15 presenters that each took specific parts of the
16 Construction Loan Program to highlight the training
17 on. So if I wasn't presenting, I was probably sitting
18 in the back of the room.

19 Q And what you specifically taught the people who were
20 being trained, was it how to sell mortgage --

21 A (Interposing) No.

22 Q (Continuing) -- or what were you training them to do?

23 A During that my specific process was the completion of
24 the draw requests, how to, what a Lien Waiver form
25 looks like and the proper procedures for issuing a

1 draw.

2 Q And in 2008 you said you performed site inspection on
3 seven properties. Is that correct?

4 A Approximately seven. It might have been six.

5 Q Did you ever go to California on behalf of GMAC
6 business in 2009?

7 A No.

8 Q For the 2008 site visit were you a District Risk
9 Manager at that time?

10 A No. It was just -- well, let's see -- no. It was
11 just -- no, not yet. It was because I had been
12 assigned the Northern California marketplace but they
13 were still actively -- GMAC Mortgage was still
14 actively doing loans.

15 Q Okay.

16 A So, no. It was shortly thereafter that everything
17 changed.

18 Q And is that why you were no longer doing site visits
19 in the latter part of 2008 and 2009?

20 A There was a -- yeah, there was a curtailment and there
21 was not a need for us to be going down there, there
22 wasn't a need.

23 Q Now, the 2008 site inspections, I believe you
24 indicated they were tied to distressed loans. Is that
25 correct?

1 A Correct.

2 Q Could you define for me since I'm not familiar what a
3 distressed loan is, can you tell me?

4 A Sure. A distressed loan could be any number of
5 reasons that a loan goes into breach or default: Not
6 making your payments, not completing the home on time,
7 fraudulent activities, misrepresentations, there's all
8 kinds of numbers of reasons why a loan would be
9 distressed, an audit being done on the credit file and
10 being found that the credit information that was
11 supplied to the bank wasn't correct. So a number of
12 reasons.

13 Q Okay. And for the loans, for the properties that you
14 were inspecting in 2008 did you have any dealing with
15 approving those loans?

16 A No.

17 Q While you were at GMAC at any given time what was the
18 largest number of loan officers that you oversaw?

19 A I'm going to say probably close to 60.

20 Q And where were they located?

21 A In my region.

22 Q Your region included Washington, Oregon, Idaho,
23 Hawaii, Alaska and California?

24 A Correct.

25 Q Were they equally divided in each state?

1 A No.

2 Q Okay. How many people were in California
3 approximately?

4 A How many people, loan officers?

5 Q Yes.

6 A I don't recall.

7 Q Would you say it was more than 15?

8 A Yes. Well, let me back up. More than 15 certified
9 construction lending officers, no.

10 Q Okay. Did you oversee people for GMAC other than loan
11 officers?

12 A No.

13 Q So I'm only talking about people you oversaw whether
14 they're certified or not.

15 A No. And I did not oversee in a managerial manner as
16 you're implying that were loan officers either. They
17 worked for GMAC Mortgage.

18 Q All right. Because I thought I had a Response from
19 GMAC indicating you oversaw loan officers.

20 MR. BARBAG: Its been indicated to me
21 that we have less than five minutes left on the tape.
22 We're going to take a break now.

23 THE VIDEOGRAPHER: The time is now
24 approximately 1:26 p.m., this marks the end of Tape
25 Number Two. We are off the record.

(Lunch recess taken from
1:26 p.m. to 2:06 p.m.)

//

THE VIDEOGRAPHER: We are on the record.

The time now is approximately 2:06 p.m., starts the
beginning of Tape Number Three.

//

Q (by Mr. Barbag) Okay, Mr. Robertson, we're back on the
record, we're back from lunch. You understand you're
still under oath. Right?

A Yes.

Q And everything else that was set forward earlier this
morning as far as giving verbal answers, that still
applies.

A Yes.

Q Now, at recess I believe we were discussing your
oversight of loan officers in California. I'm going
to present to you a document that was provided to us
from GMAC in response to our questions today. It's a
five-page document and it has a Proof of Service dated
November 30, 2011, from GMAC's office in response to
Special Interrogatories, Set One, and I'm going to
direct your attention specifically to page 7 which
responds to Special Interrogatory No. 8. And I'm
going to direct you to read lines 1 through 9 to

1 yourself. Now, this is the only copy that I have so
2 I'm going to ask you not to write on it. We're going
3 to make this as Exhibit "12" and we'll give it to the
4 Reporter before we leave. I'm going to hand it to you
5 and you can have your counsel look at it. (Handing)

6 MR. LIU: I'm sorry what are we looking
7 at again?

8 MR. BARBAG: We're looking at Special
9 Interrogatory No. 8 and the Response thereto.

10 MR. LIU: I'll just state my objection
11 then. Obviously this is a discovery Request to GMAC
12 Mortgage and responded to by GMAC Mortgage and not
13 Mr. Robertson.

14 MR. BARBAG: Okay.

15 MR. LIU: With that, he can answer.

16 MR. BARBAG: Sure.

17 //

18 A Okay.

19 Q (by Mr. Barbag) All right. Do you agree with that
20 description of your duties?

21 A With the description of my duties, yes.

22 Q Okay.

23 A The time frame, no.

24 Q Okay. What part of the time frame do you disagree
25 with?

1 A You are saying or somebody's saying in here that, what
2 was it, in 2008 -- let's see, I've got to find it
3 again.

4 Q We're only talking about Special Interrogatory No. 8.

5 A Oh, I was reading 5, excuse me. My apologies.

6 Q That's fine. Let's try this again.

7 With regard to Special Interrogatory No. 8 and
8 the Response thereto, if you could read that again to
9 yourself and when you're done let me know.

10 A Okay.

11 Q So would you agree with this description of your
12 duties?

13 A It's pretty close.

14 Q Would you change it?

15 A Would I change it?

16 Q Because you said "It's pretty close," I just want to
17 make sure.

18 A For general purposes this is fine.

19 Q So there's nothing incorrect they've written?

20 A No.

21 MR. LIU: So we're going to mark this as
22 Exhibit "12"?

23 MR. BARBAG: As Exhibit "12," yes.

24 And I'll hand this to the Reporter to be marked
25 as "12."

(Exhibit No. "12" marked for
identification by Reporter.)

//

Q (by Mr. Barbag) So in that description of your duties
you indicated that you had oversight of certified loan
officers.

A Right.

Q And what does that mean to you when it says oversight?

A That they would prepare a package based on the
training that they would have received from me or
another sales manager, they would present a package,
we would review it for quality control purposes, for
completion and then make the determination whether or
not the project was going to be acceptable or not.

Q I see. So a loan officer would present a potential
loan to you ...

A No, sir.

Q Well, you said "package," I'm not sure what you're
talking about.

A Do you understand the process?

Q Maybe you can explain.

A Do you have an hour?

Q I don't.

A I did not do loans. PERIOD. Had nothing to do with
loans. The only thing that I was responsible for was

1 the construction project. The credit approvals, the
2 borrower, all of the borrower credit package,
3 financial information, all the rest of that was
4 handled by the GMAC Mortgage Underwriting Department
5 and Loan Officers. So the Construction Department had
6 nothing to do with the loan.

7 Q So your oversight of the loan officers entailed what?

8 A The construction project and making sure that if they
9 did do a credit application package with the intent of
10 doing a construction loan that the project met the
11 policies and criteria as required by GMAC.

12 Q And how many loan officers in California would present
13 packages to you while you worked for GMAC?

14 A None.

15 Q None?

16 A None.

17 Q How many loan officers would present packages to you
18 while you worked with GMAC whether or not they were in
19 California?

20 A Probably 25 to 40 at the most.

21 Q Since there were about 25 or 26 loans in California
22 relating to construction, were you overseeing the loan
23 officers that issued those loans?

24 A No.

25 Q You didn't.

1 A No.

2 Q Who was overseeing them?

3 A When a construction loan closes Loan Officer's paid
4 and they're out of the picture. Okay. The
5 Construction Department then oversees the project. So
6 the Loan Officer is not involved.

7 Q Okay. So during your tenure with GMAC no loans were
8 originated in California?

9 A Correct. Well, excuse me. There was no -- there was
10 loans closed during my tenure at GMAC, but I was not
11 the representative for the California market.

12 Q I see.

13 A Does that make sense, I mean do you understand how
14 that worked?

15 Q Well, I understand that your district was part of
16 Northern California. Is that right?

17 A Correct.

18 Q So was that just in case loans that occurred in that
19 area?

20 A Correct. Well, I mean when I took over the Northern
21 California marketplace, okay, I believe that was in
22 like late June/early July, in August is when they shut
23 down residential -- GM Mortgage residential shop. You
24 don't have loan officers, you're not going to
25 originate loans.

1 Q And your duties then were in Northern California
2 seeing those construction loans through until they
3 were finalized?

4 A Seeing the construction projects through is correct.

5 Q And you already described that meant site inspectors
6 and making sure draws were issued properly and going
7 over the line items.

8 A Correct.

9 Q How often would loan officers receive training?

10 MR. LIU: Objection, it's outside the
11 scope of his Motion to Quash. But I mean if you have
12 a followup question related to the Zygelman loan.

13 MR. BARBAG: Sure. You're objecting,
14 are you going to --

15 MR. LIU: (Interposing) I'll instruct
16 him not to answer.

17 //

18 Q (by Mr. Barbag) Now, with regard processing monthly
19 construction draws, can you describe that process to
20 me?

21 A There's two processes that we encountered. The first
22 one was that the original loans were set up to qualify
23 for monthly draws meaning that each month an
24 inspection would be performed on the subject property,
25 a determination would be made by the inspector of the

1 completion of the work and they would then fill out
2 the line items letting us know what percentage of the
3 line item or what portion of the project could be paid
4 for during that particular draw cycle.

5 Q Right.

6 A The inspector -- well, so the customer or the
7 contractor would fill out a Draw Request form and
8 either fax it or mail that to Fort Washington for
9 processing. I would then or my counterparts would
10 then validate the inspection, meaning that the
11 inspector's saying that there's \$5,000 that can be
12 drawn out of a particular line item but we may have
13 already paid out \$2500 on that line item, so that the
14 client would only get 2500. And so you go through
15 that validation process. Then I would send an e-mail
16 to the contractor and/or the borrower explaining that
17 this is what the project is qualified to be able to be
18 disbursed this month; if you agree, sign a Lien Waiver
19 form, let me know and we'll go ahead and disburse the
20 funds. That was the typical standard way of doing it.

21 When the economy collapsed GMAC took the position
22 that: You know what, a lot of people are getting hurt,
23 so let's make this a little bit easier so you're not
24 going to have to wait a month for each draw cycle and
25 we will go ahead -- because the customer had to pay

1 for the draws, draw inspections. So we went ahead and
2 said: You know what, we're going to set it up on an
3 every two week basis, we're going to automatically
4 have the inspector go out to the job site whether or
5 not the customer wants or needs the draw. Now that's
6 going to serve a couple purposes: One is it's going to
7 let us know if work is continuing; and, Two, it takes
8 a lot of pressure off the borrower and the contractor
9 because they know that they've got the opportunity to
10 receive funds every two weeks if work is being
11 completed. But it also gave me some -- gave us as
12 Risk people some oversight which meant we weren't
13 necessarily going to have to be going out into the
14 field doing progress inspections because we've got an
15 inspector out there every two weeks. Okay. That was
16 instituted by policy by Rick Smith and Tom Webster I
17 believe it was somewhere in that August of 2008
18 period, might have been, it could have been then
19 September but that's when we started our two a month
20 inspections. Customer didn't have to take the money
21 on a two week basis, but it gave them options.

22 Q So prior to this institution of what I'm going to call
23 the second plan, the every two weeks an inspector
24 going out, progress inspections were done.

25 A Correct. By request, by a draw request.

1 Q I see. What would cause a progress inspection to be
2 done if there was a draw request because not all the
3 time you would do a progress inspection, would you?

4 A Absolutely. Anytime there's a draw request there's an
5 inspection. You're not going to pay out funds unless
6 you have verification that the work's been done.

7 Q The only reason why I ask that is because you
8 indicated sometimes the inspector would say release
9 \$5,000 on the line item, but you had already found out
10 2500 was paid.

11 A Right.

12 Q So how does that happen?

13 A Oh, let's say for instance you've got \$5,000 in tile,
14 okay, specialty item type of a thing. In order to
15 place the order the supplier wants 50 percent deposit
16 or a 30 percent deposit. Okay. Typically the builder
17 or the customer would come and say "Gee, we need to
18 get paid for this because I can't order my tile unless
19 I have the deposit." Our policy was that if the
20 supplier supplied us with an invoice, okay, we would
21 go ahead and pay up to 50 percent if that's what the
22 requirement was. Okay. But that draw check would be
23 paid directly to the supplier not to the builder or
24 the homeowner. Okay. It was a quality control checks
25 and balances.

1 Q Okay. Please correct me if I'm wrong, maybe I'm
2 misstating your testimony, it's not intentional if I
3 am. But while you were working with GMAC you had
4 about 25 or 26 properties that you oversaw in
5 California. Is that right?

6 A Correct.

7 Q And you inspected about six or seven. Is that right?

8 MR. LIU: Objection, misstates his
9 testimony as to whether he inspected the property or
10 not.

11 //

12 Q (by Mr. Barbag) Oh, I'm sorry, I thought you said in
13 2008 that you inspected six or seven properties; is
14 that not correct?

15 A I had site visits.

16 Q Site visits. I apologize.

17 A It's not inspections. Entirely different.

18 Q Okay. Right. Because you're not certified as an
19 inspector --

20 A (Interposing) Right.

21 Q (Continuing) -- but you could visit the sites.

22 A Right.

23 Q I apologize.

24 MR. LIU: And objection again, he didn't
25 visit the sites.

1 THE DEPONENT: My trip to California?

2 MR. LIU: Oh, that's what you're talking
3 about. I'm sorry.

4 //

5 Q (by Mr. Barbag) You also indicated that of those 25 or
6 26 properties five to six of them were jumbo loans.

7 Is that correct?

8 A Correct.

9 Q And when GMAC decided or couldn't -- I'm not making
10 any -- but decided jumbo loans were no longer going to
11 be done ...

12 A Right.

13 Q (Continuing) ... did you meet with any of those people
14 in person?

15 A No.

16 Q How did you contact them?

17 A Typically through either a phone call or e-mail.

18 Q Did you have to contact them more than one time?

19 A There was a few of them that probably I talked to more
20 than once.

21 Q About how many times?

22 A (Interposing) I honestly don't know. In course of
23 business, you know, you call someone. Do you remember
24 every single phone call? You know you guys do because
25 you fill out in 15 minute increments for a 6-minute

1 phone call.

2 Q My contracts are a little different, but that's not up
3 for debate here today.

4 So one to three phone calls you would say about.

5 A Yes.

6 Q You mentioned earlier Mark Taylor, I believe, he was
7 the person actually constructing this site. Is that
8 correct?

9 A Correct.

10 Q And you corresponded with him through e-mails. Is
11 that right?

12 A With Mr. Taylor it was through e-mails and he would
13 then call Fort Washington because he did not agree
14 with our draw policies.

15 Q Did you ever have any discussions with Hayomyom or
16 Steve Zipp?

17 A No.

18 Q No conversations?

19 A None. Well, not that I can verify.

20 MR. LIU: I'll object.

21 Do you understand the question?

22 THE DEPONENT: Did I have any
23 conversations. No, that I can ...

24 //

25 Q (by Mr. Barbag) Before this lawsuit had you ever heard

1 of the company named Hayomyom?

2 A Yes.

3 Q And when did you first hear?

4 A Probably the latter part of June or the beginning part
5 of June 2009 possibly and that was only after -- yeah,
6 probably June. I know it's June, but I can't be
7 specific about the date.

8 Q Okay. And under what circumstances did you hear about
9 Hayomyom?

10 A Mr. Zygelman presented me a facsimile copy of the
11 Purchase and Sale Agreement that had Hayomyom on the
12 document.

13 Q Are you familiar with the property located at
14 6225 Gobernadores -- I'll spell that,
15 G-O-B-E-R-N-A-D-O-R-E-S -- Lane in Carmichael,
16 California?

17 A According to all the documents here that's the subject
18 property.

19 Q Okay. And when did you first become acquainted with
20 that property?

21 A I'm sorry?

22 Q When did you first become acquainted with that
23 property?

24 A Can you define "become acquainted"?

25 Q Sure. When did you first learn about the property's

1 existence?

2 A Oh. Probably that would have been probably June,
3 latter part of June 2008.

4 Q And you found out about the property through Zygelman?

5 A No.

6 Q How did you find out about it?

7 A I was -- the California representative left the
8 company and so the state was cut in half and I was
9 assigned the accounts from Fresno north.

10 Q And so your review of the files that you were
11 overtaking you found out about it.

12 A Yes.

13 Q And when you were reviewing the files you discovered
14 that GMAC's interest was in that property. Right?

15 A I'm not sure what ...

16 Q How much they had loaned?

17 A Okay. Yes.

18 Q Were you ever introduced to Steve Zipp?

19 A No.

20 Q Did you ever become aware that the subject property
21 was to be sold to Hayomyom?

22 A Based upon a facsimile Purchase and Sale Agreement
23 that was supplied to me by Mr. Zygelman.

24 Q And that was around June 2009. Is that right?

25 A I believe so. I may be off on the dates on that.

1 Q And Zygelman was the seller of the property?

2 A Based upon the facsimile copy that Zygelman presented
3 to me he represented as his sale, yes.

4 Q If you know, was there going to be any financing of
5 that property?

6 A According to the facsimile copy of the Purchase and
7 Sale Agreement there was a call for financing in the
8 purchase which created a red flag for me.

9 Q Okay. Why did that create a red flag?

10 A Because you can't finance an LLC.

11 Q And you were under the impression that Hayomyom was an
12 LLC?

13 A It said right on the Purchase and Sale Agreement,
14 Hayomyom LLC.

15 Q And how come LLC's are not --

16 A (Interposing) LLC's are not living entities.

17 MR. LIU: Let him finish his question.

18 THE DEPONENT: Yeah, I'm sorry.

19 MR. BARBAG: You got the answer out,
20 that's fine.

21 //

22 Q (by Mr. Barbag) Who was supposed to finance that
23 subject property, if you know?

24 A I have no idea.

25 Q Do you know what the terms of the financing was

1 supposed to be?

2 A No.

3 Q Do you know if that financing ever took place?

4 A No.

5 Q I asked that question pretty bad. You said "No," so
6 that could mean either you don't know or you know it
7 wasn't taking place.

8 A I don't know.

9 Q If it took place?

10 A Let's start this one over, I want to make sure your
11 question is correct.

12 Q Was any money ever financed on this property to
13 Hayomyom?

14 A No.

15 Q Do you know why?

16 A No.

17 Q When you worked for GMAC were you required to keep
18 track of your hours?

19 A What do you mean keep track of my hours?

20 Q Well, you brought out the fact that attorneys bill by
21 the hour.

22 A (Interposing) Oh. No. No. No, I was on the track
23 24/7. You have to remember I had Hawaii which is
24 three hours behind me and dealing with Fort
25 Washington, Pennsylvania which is three hours ahead of

119

1 me, so I had a six hour time spread between Hawaii and
2 there. I also have Alaska that's an hour behind us.
3 So I mean I'm dealing with three different time zones.
4 And so yeah.

5 Q So there would be no documentation about what hours
6 you put in to each project?

7 A No.

8 Q And since you mentioned that you had no conversations
9 with Mr. Zipp I just want to make sure that it also
10 includes no e-mail and no facsimile or any
11 correspondence.

12 A No correspondence at all.

13 Need some WD40 on this chair.

14 Q If he remembers, Steve Zipp remembers a conversation
15 with you, he would be mistaken?

16 A Absolutely.

17 Q Other than the initial facsimile from Mr. Zygelman to
18 you regarding Steve Zipp did you have any
19 conversations about Hayomyom or Steve Zipp with anyone
20 else?

21 A No.

22 Q No?

23 A No.

24 Q Do you know if Mr. Zipp ever put money in an escrow
25 account for the subject property?

1 A I have no direct knowledge of that although I have
2 seen based on documentation provided by Mr. Zygelman's
3 counsel a copy of an earnest -- essentially an earnest
4 money check for \$37,500 was made out to Wilshire
5 Escrow.

6 Q In 2009 did GMAC own the subject property?

7 A Well, given that state of California is a Title 30
8 state, they hold the title. Right?

9 Q That's a yes. Right?

10 A Yes.

11 Q Thank you.

12 A Well, because it has to be clarified because here in
13 the state of Washington we're a lien theory state
14 where the lender does not own the title. Okay. Each
15 state is different.

16 Q If you know, in 2009 how much money had GMAC loaned
17 out on that property?

18 A I have no recollection.

19 Q Do you know who was responsible for making the
20 decision to loan the funds?

21 A I'm sorry?

22 Q Do you know who was responsible for making the
23 decision to loan those funds?

24 A You mean the credit?

25 Q Yes.

1 A I'm assuming that it was an underwriter for GMAC
2 Mortgage.

3 Q And what about the draws, were the draws your
4 responsibility or someone else's?

5 A Well, they were someone else's responsibility until I
6 came in to the picture after that individual left.

7 Q And do you recall of the draws for that property how
8 much you had released?

9 A I mean I imagine we could try and rebuild it, but I
10 honestly don't know.

11 Q As a District Risk Manager in 2009 what was your
12 responsibility regarding the construction loan
13 outstanding on the subject property?

14 A The construction loan, the responsibility I had was to
15 ensure that the draw -- excuse me, that the
16 inspections were done according to the way we had them
17 set up, and this is after we changed over to an every
18 two week automatic inspection, that the inspections
19 were validated and that the communication was sent to
20 the builder and the borrower letting them know that
21 they were eligible for "X" amount of dollars on that
22 particular draw.

23 Q Did you have any responsibility making sure the draws
24 would ever be repaid?

25 A I'm not sure I understand your question. Draws be

1 repaid? If I disburse a draw to a contractor, the
2 contractor's not going to repay the draw.

3 Q I understand that. But based on the inspection
4 reports that you received there is a belief that there
5 is something worth that you're releasing the draw for.
6 Right?

7 A Were completed.

8 Q And as a result you were expecting repayment on that
9 eventually. Correct?

10 A I'm not sure your question's making a lot of sense and
11 I apologize if I'm a little slow on this one, but if a
12 guy borrows 1.2 million dollars from me and I've drawn
13 out \$9,000 on one month draw I'm assuming that that
14 \$9,000 is going to get repaid over the amortized
15 portion of this takeout loan. I mean it's the loan
16 that he borrowed and we're just holding those funds in
17 the escrow account, Construction Lending Department.

18 Q In 2009 do you know what documents GMAC required for
19 approving a buyer on a property?

20 A Again you're going to have to clarify your question.

21 Q Okay. In particular this property.

22 A Okay.

23 Q Do you know what kind of documents GMAC would require
24 from a potential buyer?

25 A Okay. Depends on what side of the fence you're

1 talking. If you're asking me about a credit financial
2 package, no. If you're asking me about a construction
3 project, yes.

4 Q I see. Do you know why Zygelman would have sent you
5 the Purchase and Sale Agreement regarding this
6 property?

7 A Yes. Zygelman knew that he was running out of
8 extensions. He knew that he wanted to get the thing
9 closed, processed out, and by his own admission he
10 could not qualify for additional financing. And he
11 had indicated to me that he was going to try and sell
12 the property.

13 Q Okay. And if he was trying to sell the property, that
14 would have allowed you confidence that you would get
15 the draws back?

16 A I'm not getting draws back and you need to make sure
17 we clarify that because that's a misleading statement.

18 Q Okay.

19 A You have construction funds, in this case 1.19 million
20 dollars. All right. Those construction funds are set
21 aside into a construction lending account. We draw
22 from that account and each month the customer pays
23 interest only on those funds that they have drawn,
24 interest only. At the end when the loan converts they
25 start making their amortized payments thereby repaying

1 a portion of the principal back. So to repay a draw
2 is not the proper context to put that in.

3 Q I guess my question is: Do you know why Zygelman would
4 have felt he would have gotten more draw out of you if
5 he showed you a Purchase and Sale Agreement?

6 A It wasn't more draw. It was another extension.

7 Q Extension.

8 A And it was continued cooperation. He was looking to
9 us to make sure that we went ahead and extended him
10 another time and he told me he was going to sell the
11 property. Then when he told me he sold it, and I
12 asked for over a month and a half to get a copy of the
13 Purchase and Sale Agreement and never got it. Then I
14 finally got a faxed copy of an incomplete Purchase and
15 Sale Agreement.

16 Q And the Purchase and Sale Agreement that you
17 anticipated receiving, what about that would allow you
18 to give him the extension that he requested?

19 A Validation and verification that we had a legitimate
20 transaction.

21 Q Okay. Before you left GMAC do you know how many
22 properties were left uncompleted that had construction
23 loans attached to them?

24 A I have no idea.

25 Q Do you know how many that you were supposed to oversee

1 that were left uncompleted?

2 A I have -- I don't know. I don't know.

3 Q What would have happened if Mr. Zygelman was unable to
4 finish the construction on the subject property?

5 A As far as I was concerned, as far as I know, he didn't
6 complete the construction.

7 Q And I don't want to get into that.

8 A No, I understand. I understand. But that's the way
9 it goes.

10 Q So what is the normal procedure if that happens?

11 A With GMAC I would turn it over to Legal for beginning
12 of the NOD process.

13 Q And that's foreclosure?

14 A Well, it's a Notice of Default.

15 Q Okay.

16 A So they would send out a breach letter and then it
17 would be up to the Legal Department and GMAC Bank to
18 make determinations on how to proceed.

19 Q In your experience with GMAC would they often
20 foreclose in that kind of climate?

21 A I can't answer that. That's not my -- that was not my
22 venue.

23 MR. LIU: I object, it doesn't go to the
24 allegations in the Complaint and the Cross-Complaint
25 and as to the Motion to Quash.

1 Q (by Mr. Barbag) Once the property is foreclosed on
2 doesn't the Bank typically take a loss on it?

3 MR. LIU: Objection again, same
4 objection. It's speculative, it's not relevant to the
5 Complaint, the Cross-Complaint and not to the Motion
6 to Quash.

7 Instruct you not to answer.

8 //

9 Q (by Mr. Barbag) Would GMAC ever allow another company
10 to loan on the same construction project on which they
11 were loaning?

12 MR. LIU: Objection, same objection.

13 Instruct not to answer.

14 MR. BARBAG: Are you going to follow
15 your counsel's advice?

16 THE DEPONENT: Absolutely follow
17 Counsel's advice.

18 //

19 Q (by Mr. Barbag) Did you ever have any conversations
20 with Mr. Zygelman that his loan extension would only
21 be approved if he had a bonafide purchaser for the
22 property?

23 A That was not the -- I had a conversation with
24 Zygelman, but that was not the gist of the
25 conversation.

1 Q Okay. Could you tell me the gist?

2 A Sure. I'll tell you exactly what it was. Zygelman
3 called and said "I got a potential buyer on the house
4 and he wants some improvements done and can we load
5 those into the construction loan." I said "No." He
6 says "Well, what if the buyer wants to pay for those."
7 I said "Well, here's what happens and I'll take a
8 moment to explain. You have a construction loan.
9 Lenders only lend on work that has been completed, in
10 place, you can't have it onsite, its got to be
11 installed completed and then it qualifies to be paid."

12 Q Unless they get the tile for the 50 percent.

13 A Unless you have an invoice for a special type of thing
14 that we agree to do.

15 Excuse me, I'm having one of my short brain farts
16 here.

17 Q Take your time.

18 A So if a buyer came in and said: You know what, I want
19 to improve or do these additional things that are
20 outside of the real estate contract, the real estate
21 loan -- or the Construction Loan Contract and the
22 Construction Loan Agreement; then as a lender what
23 we're going to want is we're going to say: Okay, if
24 that's what you guys want to do, I want the contractor
25 to provide me with cost breakdown line item for every

1 one of those improvements that that buyer says that
2 they want to have done and then we will have our
3 appraiser go out and take a look to see if those
4 improvements are going to increase the value, maintain
5 the value or decrease the value of the property. If
6 everything's okay, then we say: Okay, we'll go ahead
7 and allow you to do that, however those funds that the
8 borrower would be putting up to pay for those
9 improvements would then have to be placed into a
10 separate construction lending account with the lender
11 and we would draw those funds out upon the required
12 inspections. So that the Bank is always in control of
13 the funds. You always spend the customer's funds
14 first, it's called protecting your security.

15 But that's an exception. And as I stated earlier
16 with Mr. Zygelman's attorney, that I had limited
17 decision making authority only with inside of the
18 policy. Anything that stepped outside of policy was
19 an exception that would have had to have been approved
20 by someone else at GMAC Bank, at a minimum level Rick
21 Smith.

22 Q I see.

23 A Okay. So there's a system in play.

24 Q Do you know if Rick Smith ever approved that on this
25 project?

1 A Not that I'm -- yeah, not when I was involved in it.
2 No one ever knew about it.

3 Q The conversation that you had with Mr. Zygelman about
4 this issue, did that get commemorated in an e-mail or
5 it was just telephonic?

6 A It was telephonic.

7 Q With regard to your position as District Risk Manager
8 who trained you for that?

9 A Well, without being facetious, 33 years of doing
10 construction lending has a little bit of training
11 background to it. You know a lot of mediation work,
12 resolution dispute settlements, those kind of things.

13 Q Did you ever have to do Continuing Education on it?

14 A Not that I was supposed to, but voluntarily I did do
15 my own seminars and what have you.

16 Q How many times while you were at GMAC did you go to a
17 seminar for that?

18 A While I was at GMAC? That was of my own volition?
19 None.

20 Q How about not of your own volition?

21 A We may have had two or three meetings type of thing
22 where construction techniques and technologies and
23 product lines and what have you were discussed.

24 Q And where did those take place?

25 A Generally either on conference call or in Fort

1 Washington.

2 Q And if it was on a conference call you were in
3 Everett, Washington while that call was made or where
4 were you located?

5 A I don't know. You know honestly I could have been in
6 Montana, I could have been in Oregon, I could have
7 been in ...

8 Q California?

9 A No. No, I was only in California one time on site
10 inspections and I didn't have any phone calls.

11 Q What about this Construction Lending Manual, did you
12 ever utilize that in your capacity?

13 A Yes.

14 Q Do you still have a copy of that manual?

15 A I have nothing from my employment with GMAC.

16 Q Do you know who would have a copy of that?

17 A I have no idea.

18 Q And with the Purchase and Sale Agreement that you
19 received from Zygelman did you send that off to anyone
20 else?

21 A Oh, yeah, everything gets sent back to Fort
22 Washington.

23 Q Would Mr. Webster or Mr. Smith also have reviewed
24 that?

25 A I don't know.

1 Q Do you know who in Fort Washington may have reviewed
2 that?

3 A No. Because there's so many people back there.

4 Q There wasn't any one person that you dealt with for a
5 particular state?

6 A No.

7 Q If I wanted to find out who dealt with that, do you
8 know who I should ask?

9 A I'm sorry?

10 Q Who I should ask might have dealt with it?

11 A I haven't been at GMAC in three years, I don't know
12 anything in that regard.

13 Q And before this lawsuit you didn't know that Mr. Zipp
14 or Hayomyom had provided funds to Mr. Zygelman for the
15 subject property. Is that correct?

16 A That's absolutely correct. Well, excuse me. Excuse
17 me. Before the lawsuit? No. No. Before the
18 lawsuit, no. Since then you guys sent me documents
19 that referenced it.

20 Q In addition to the Purchase and Sale Agreement do you
21 remember receiving any documents from Wilshire Escrow?

22 A None.

23 Q Do you remember having any conversations with anyone
24 from --

25 A (Interposing) Yes.

1 Q (Continuing) -- Wilshire?

2 MR. LIU: Again, please wait until he is
3 finished.

4 THE DEPONENT: I'm sorry.

5 //

6 Q (by Mr. Barbag) About how many conversations?

7 A One.

8 Q And with who?

9 A I have no idea.

10 Q Was it commemorated by e-mail?

11 A No.

12 Q What was the conversation about?

13 A Do we have a legitimate purchase and sale, and I was
14 informed by Wilshire Escrow that the deal that I was
15 calling on had died a couple weeks earlier.

16 Q Do you recall when you made that call?

17 A It was about the day -- I think it was probably the
18 day after I received the facsimile Purchase and Sale
19 Agreement from Zygelman, it's part of my diligence,
20 it's my job to validate.

21 Q You never told Mr. Zipp that GMAC would directly
22 reimburse the funds they --

23 A (Interposing) Absolutely --

24 Q (Continuing) -- had released?

25 A Absolutely not.

1 MR. LIU: I'm sorry, there was an
2 interruption. Do you want to ask that again because
3 he might have cut off.

4 MR. BARBAG: That's fine.

5 //

6 Q (by Mr. Barbag) You never told Mr. Zipp that GMAC
7 would reimburse him for the funds he released to
8 Mr. Zygelman?

9 A Absolutely not.

10 Q Do you know why Mr. Zipp would have released these
11 kind of funds without the protection of GMAC?

12 A Having never met Mr. Zipp, having never had any
13 conversations with Mr. Zipp, having no disclosures of
14 who Mr. Zipp is, I have no idea.

15 Q Do you think it's a smart business decision to release
16 those kind of funds without some sort of promise?

17 A That's an opinion that, you know, smart business
18 decision without getting -- without taking the
19 security and the diligence that a lender would
20 require, yeah it was a stupid decision.

21 Q So you wouldn't release the funds if you were in his
22 position?

23 A Absolutely not, unless I had something in writing with
24 agreements from the lender who has the first lien
25 because if I give money to someone in that situation

1 and I'm getting behind a construction loan, my
2 goodness gracious then I'm basically putting myself
3 into a jeopardized second lien position. So, yeah, if
4 I'm going to give someone \$30,000 I'm going to want to
5 make darn sure that my \$30,000 is legally protected.

6 Q Once you have approved a construction draw release, if
7 I'm saying that correctly, how long would it take to
8 get the funds in to a person who is going to receive
9 them?

10 A It depends on the way that it was set up. Some
11 customers would take a wire directly to their account.
12 Other customers would authorize the release to be
13 wired directly to the building account. Other
14 customers would decide that they would want a dual
15 payee check made out to both them and the builder. So
16 it really depends on the customer and the decisions
17 they make.

18 Q And for this subject property in particular,
19 approximately what was the turnaround?

20 A After -- turnaround time from when?

21 Q Well, say from inspection.

22 A Okay, from inspection it would generally take probably
23 three days for me to get the inspection report after
24 that, another depending on workload let's say a
25 maximum of 24 hours for me to validate and then send

1 out the notification to the builder and the borrower
2 asking for the lien releases to be signed and sent
3 back to me or they could send them directly back to
4 Fort Washington. So again, timing really varied based
5 upon the contractor and the borrower.

6 Q Okay. Once Fort Washington received the lien releases
7 how long would it take them in this particular
8 property to release those funds?

9 A I don't know. I don't have any recollection of how
10 long it took. It was only a matter of a day or two or
11 three at the most.

12 Q So two weeks would be an excessively long time?

13 A Two weeks would not be the normal turnaround.

14 Q Was there a release to Mr. Zygelman in about July
15 2009?

16 A I'm sorry?

17 Q Was there a release or draw --

18 A (Interposing) A draw?

19 Q (Continuing) -- to Mr. Zygelman in July 2009?

20 A Yeah, that would have been his next to last, so yes
21 there was probably one in July.

22 Q And the entire amount went to him?

23 A Yeah. I mean, yes, I can't recall of any invoices
24 that were being paid separately.

25 Q Do you know what documents would show that

1 disbursement?

2 A Well, Mr. Zygelman would have a copy of the
3 distribution sheet and a copy of the cancelled check
4 and a copy of the check receipt that goes along with
5 every one of them. Where GMAC has it I don't know.

6 Q And GMAC never issued any funds to Mr. Zipp or
7 Hayomyom. Is that correct?

8 A Not that I'm aware of.

9 Q Did Mr. Zipp ever call you directly?

10 A No.

11 Q Not even in August 2009?

12 A Not even in August 2009.

13 Q Do you know why GMAC did not foreclose on the subject
14 property?

15 MR. LIU: Objection, irrelevant, outside
16 the scope of the Complaint, Cross-Complaint and Motion
17 to Quash.

18 Instruct him not to answer.

19 MR. BARBAG: I presume you're going to
20 follow the advice?

21 THE DEPONENT: Of my attorney.

22 MR. BARBAG: I think we are going to
23 have to share. I believe we're up to Exhibit No. "13"
24 at this point.

25 //

(Exhibit No. "13" marked for
identification by Reporter.)

//

Q (by Mr. Barbag) I'm going to show your counsel and
then when he's done with it I'll ask him to pass it to
you, it's an e-mail dated July 1st, 2009, and it's
from you to a person named Sigmund. And I'll ask you
to read it to yourself. I'm only addressing that top
e-mail, nothing else on that page.

A Okay.

Q Okay. Now, I just want to clarify. Is Sigmund also
known as Mr. Zygelman?

A Mr. Zygelman, correct.

Q I just wanted that clarified. And the first sentence
refers to a "buyers loan approval." Do you see that?

A Yes.

Q Who was the buyer to which the loan approval referred?

A I am not a hundred percent certain. Mr. Zygelman and
Mr. Mesika had sent me a number of different documents
and they could not validate, and if I can't validate I
don't accept them. This case, the July, we were going
up to the last extension. Zygelman had paid for an
extension, okay, the Bank decided he was going to pay
for that last extension. He was in agitated state
because he knew he was running out of time. And I

1 said "You get me a Purchase and Sale Agreement that I
2 can validate, okay, and I will go ahead and process
3 the one more last extension." So it was really he
4 knew that if he didn't have a sale he wasn't going to
5 get an extension. Okay. "Jacob" is Jacob Mesika.
6 And since I received those documents I started the
7 extension paperwork and that last one we didn't charge
8 him with the additional, I could have hit him for
9 another \$4800 for the last 30 day extension but we
10 didn't do that. So, yeah, I'm not a hundred percent
11 certain because I don't have any documents, I don't
12 recall.

13 Q I'm sorry to interrupt you, I don't want to interrupt
14 the rest of your answer.

15 A No, that's fine, I'm done.

16 Q Okay. Were there multiple potential buyers on this
17 property?

18 A I believe there was three instances where Mr. Zygelman
19 said he had a sale.

20 Q Okay.

21 A But that went from December or January of 2008/2009 to
22 September of 2009.

23 Q And each of those three --

24 A (Interposing) None of them could validate.

25 Q Couldn't validate. Except for this last one which

1 that's why the extension paperwork began.

2 A (Interposing) Right.

3 Q Would it be fair to say that the buyer was Hayomyom?

4 A I -- it's possible, but I can't guarantee that without
5 seeing documents.

6 Q Now, you mentioned validating the documents and I'm
7 not sure what you mean by that.

8 A Well, validating documents is usually in a real estate
9 purchase transaction. You open up an escrow and the
10 escrow company then orders a Preliminary Title Report
11 and then there are preliminary -- what are called
12 Preliminary HUD One Settlement Statements that are
13 prepared, there is information on the lender or how
14 the thing is being financed. So I could call the
15 title company and ask if a Preliminary Title Report
16 has been ordered, has one been issued, I can call the
17 escrow company, have them verify that they have escrow
18 funds on account, that yes they have an escrow
19 established for the persons that are supposed to be
20 named. If they say no and I can't validate it, I'm
21 not accepting it.

22 Q Going back to this Exhibit "13," who did you receive
23 confirmation of the buyer's loan approval from?

24 A It was a fax -- well, I'm getting all my -- everything
25 was done through fax so I'm not -- if it's -- you know

1 what, I honestly can't recall the specifics, I'm
2 sorry.

3 Q That's fine. That's a valid answer. I'm going to see
4 if I can maybe jog your memory. Do you know who might
5 have given you that approval?

6 A Well, it would have come from Zygelman. No, excuse
7 me. Zygelman and/or Mesika, okay, because Mesika was
8 the primary contact for Mr. Zygelman.

9 Q And that's who you would have received confirmation on
10 the buyer loan approval?

11 A Well, no, no. The confirmation would have come from
12 -- and I don't even know if there's a loan approval to
13 be honest with you, it could have been a cash sale and
14 someone provide bank statements to show that they've
15 got enough cash to cover the sale. Yeah, so I mean --
16 I understand, I understand. But I honestly -- show me
17 the documents that will help me refresh my memory.

18 Q Which document would we look at?

19 A Well, whatever, receive confirmation about his loan
20 approval?

21 Q Yes.

22 A Okay. If I had that, but I ...

23 Q So if we showed you the confirmation ...

24 A That may help me with jogging the memory.

25 Q Do you know who would have that confirmation?

1 A I would imagine Mr. Zygelman.

2 Q I see. All right. Do you know if anyone in GMAC
3 would have had a copy of that loan approval or
4 confirmation of buyer's loan approval?

5 A As I mentioned before, everything gets forwarded back
6 to Fort Washington so someone back there would have
7 received it.

8 Q I am going to show you another document that we're
9 going to mark as Exhibit "14" and I'd just like you to
10 take a look at it. (Handing) And your counsel to
11 look at it as well of course. And I just want to know
12 have you ever seen this document?

13 (Exhibit No. "14" marked for
14 identification by Reporter.)

15 //

16 THE DEPONENT: (to Mr. Liu) Is this
17 Zygelman's bank statement? There was a bank statement
18 but I'm not sure if this is the same one.

19 //

20 A I don't know.

21 Q (by Mr. Barbag) I didn't mean to eavesdrop, but you
22 talked to your counsel a little bit, I think I
23 overheard that there was a bank statement in
24 Zygelman's package of loan documents.

25 A No. You didn't hear that.

1 Q Okay. That's why I wanted to ask.

2 A No. It was in Mr. Zygelman's Responses to Ally Bank.

3 Q Okay. So other than those Responses you haven't seen
4 this?

5 A Not that I recall.

6 Q And you wouldn't have asked for a copy of this. Is
7 that correct?

8 A What do you mean I wouldn't have asked for a copy?

9 Q For a copy of his bank statement?

10 A I wouldn't because this was he's saying he had
11 \$466,000 and it wasn't enough to validate what we
12 would assume is going to be a sales price of at least
13 equal to the loan amount. So, and that wouldn't have
14 been enough.

15 Q Oh, it wouldn't have been enough, but --

16 A (Interposing) But it wouldn't have been enough to
17 confirm.

18 Q Right. Definitely I understand that it wouldn't have
19 been enough to confirm, but someone may have presented
20 to you thinking it might have been sufficient
21 documentation.

22 A I can't speculate on what someone would think.

23 Q Has that happened in the past where people have given
24 you bank statements?

25 MR. LIU: Objection, vague.

1 Do you understand the question?

2 THE DEPONENT: Well, I'm not sure.

3 //

4 A You know give me bank statements for what?

5 Q (by Mr. Barbag) Well, for something similar to what
6 Mr. Zygelman was attempting.

7 A While at GMAC, no. No.

8 Q While at GMAC did you receive bank statements from
9 potential purchasers at all?

10 A Again I did not deal with the credit side of the
11 thing.

12 Q I'm going to show you what we'll mark as Exhibit "15,"
13 I'm going to show your counsel first and then when he
14 has a moment he'll pass it to you. It's a letter from
15 Bank of the West dated June 29, 2009 from the Vice
16 President. I will let you have a moment.

17 (Exhibit "15" marked for
18 identification by Reporter.)

19 //

20 A Okay. This is -- I have seen this.

21 Q (by Mr. Barbag) Okay.

22 A And this was in the package that I received from
23 Mr. Zygelman and his attorney.

24 Q So outside of what you received from Mr. Zygelman and
25 his attorney had you ever seen this document?

1 A I had not seen this one, not until then.

2 Q I see.

3 A Or I can't recall and I think I would have recalled
4 because I notice this was addressed to Kim Pacini,
5 Lyons Realty.

6 Q Correct.

7 A So it wasn't addressed to me and I don't know where it
8 would have come from.

9 Q I'm going to have marked as Exhibit "16" a Residential
10 Purchase Agreement and Joint Escrow Instructions, it's
11 a 10 page document. I'm going to present it to your
12 attorney and when he has a moment after reviewing it
13 I'll ask him to pass it to you for review.

14 (Exhibit No. "16" marked for
15 identification by Reporter.)

16 //

17 A Okay.

18 Q (by Mr. Barbag) Now, you had referred to a faxed
19 Purchase and Sale Agreement by Mr. Zygelman and I'm
20 wondering if this is that Purchase and Sale Agreement?

21 A (Interposing) I believe so.

22 Q Okay. And was it presented to you the same day? I
23 see here there's a date at the top.

24 A (Interposing) No. No.

25 Q Do you know approximately when it was presented?

1 A It was sometime around June 29th, I believe the last
2 day or two in June because I had -- because, okay.
3 Something refreshed memory. Zygelman called, said
4 that he had a potential buyer and I said "Then send me
5 a copy of the Purchase and Sale Agreement and the
6 information we need." And I had to ask two or three
7 times for that -- that should also be in his e-mails
8 -- that we never got a response to until the end of
9 June.

10 Q Okay. So your recollection is approximately
11 June 29th, somewhere around there?

12 A Somewhere around there, yes.

13 Q I'm going to present to your attorney and have marked
14 as Exhibit "17" and ask that your attorney review,
15 pass it on to you, a document labeled Addendum to
16 Purchase Agreement Dated June 7, 2009.

17 (Exhibit No. "17" marked for
18 identification by Reporter.)

19 //

20 A Okay. I have seen this. This was never transmitted
21 to GMAC.

22 Q (by Mr. Barbag) So this was not attached to the --

23 A (Interposing) No.

24 Q (Continuing) -- Residential Purchase Agreement,
25 Exhibit "16"?

1 A Correct.

2 MR. KOEHLER: When you say "Correct" you
3 mean no it was not?

4 THE DEPONENT: No, it was not.

5 //

6 Q (by Mr. Barbag) So the first time you saw this
7 document was when?

8 A When I received Mr. Zygelman's Responses.

9 And --

10 MR. KOEHLER: There's no question
11 pending.

12 //

13 Q (by Mr. Barbag) Oh, no, please, feel free. What were
14 you going to say?

15 MR. LIU: No, there's no question
16 pending.

17 //

18 Q (by Mr. Barbag) I guess my question is: What were you
19 going to say?

20 MR. LIU: (to the Deponent) Don't.
21 We'll just let it go.

22 //

23 Q (by Mr. Barbag) I'm going to have marked as
24 Exhibit "18," and present to your attorney and ask him
25 to present it to you after review, an e-mail dated

1 June 8, 2009, from you to Sigmund who we've
2 established is Mr. Zygelman. And I apologize for the
3 quality that you have, it may be tough to read. I'm
4 addressing both on that page, it's BATE STAMPED
5 000160.

6 (Exhibit No. "18" marked for
7 identification by Reporter.)

8 //

9 A Okay.

10 Q (by Mr. Barbag) So the bottom of that page is an
11 e-mail from Sigmund, Mr. Zygelman, to you indicating
12 that \$30,000 was released from the buyer. Is that
13 correct?

14 A That's what it says.

15 Q And at that time, unless you have other information
16 Hayomyom was the buyer.

17 A Well, at that point in time on June 8th I have no
18 recollection because we didn't have a copy of the
19 Purchase and Sale Agreement, so I didn't know who the
20 buyer was.

21 Q I understand. And based on Exhibit "16" where it says
22 Hayomyom LLC and that's the Purchase and Sale
23 Agreement dated June 7, 2009, that would put this
24 e-mail in context on Exhibit "18" that Hayomyom was
25 that buyer. Is that right?

1 A If you say so.

2 Q Now, from the e-mail that you sent to Mr. Zygelman on
3 that same date, June 8, 2009, you indicate that a copy
4 of the Purchase and Sale Agreement with contact
5 information for the escrow company would help
6 facilitate the final draw of construction funds. Was
7 that accurate?

8 A Certainly. Because I could then do my validation.
9 But up to that point I don't know if I've got a
10 legitimate buyer, I don't have an escrow, I don't have
11 title, I don't have anything.

12 Q So in addition to an extension the draw was also
13 contingent upon a potential buyer?

14 A No, you're able to draw if you're still within your
15 construction term.

16 Q I guess I'm confused with the terminology in the
17 e-mail then because it says a Purchase and Sale
18 Agreement with contact information of the escrow
19 company would help facilitate a final draw down. How
20 would that help facilitate?

21 A (Interposing) Well, because we now have -- if I know
22 that I have a legitimate Purchase and Sale Agreement,
23 okay, and I know that I'm going to need to extend it,
24 okay, by having the validated information it makes the
25 extension go that much easier because all extensions

1 had to be approved by someone other than myself.
2 Okay. So you bring me -- you're running out of time,
3 you bring me a Purchase and Sale Agreement and I'm
4 saying you'd send me an e-mail to say that "Oh, I've
5 sold the place" and I'm saying "Send me the
6 documentation so that it will help facilitate."
7 That's a common event in the real estate industry, not
8 just construction.

9 Q And I understand that it would help facilitate the
10 extension, but why would it help to facilitate a draw?

11 A Because that would allow him to get his last extension
12 and then we're allowing him to get a draw. If he
13 expired, his construction term expired without an
14 extension, there's no draws. He has a buyer and he's
15 telling me that he needs another 30 days to finish.
16 I'm saying: Send me something that I can validate so
17 we can get you an extension which will facilitate your
18 final draw.

19 MR. BARBAG: The Videographer has
20 indicated that we have five minute left, so now would
21 be a good time to take a break.

22 THE VIDEOGRAPHER: The time is now
23 approximately 3:24 p.m., this marks the end of Tape
24 Number Three, we are off the record.

25 (A brief recess was taken.)

1 THE VIDEOGRAPHER: We are on the record.
2 The time is now approximately 3:33 p.m. and this marks
3 the beginning of Tape Number Four.

4 //

5 Q (by Mr. Barbag) Okay, we're back from our break and
6 again the same admonitions apply, still under oath.
7 We were discussing Exhibit "18" and it was an e-mail
8 of June 8, 2009. And at the very bottom there's an
9 assertion from Mr. Zygelman that \$30,000 was released
10 by the buyer. Then up top you ask for a copy of the
11 Purchase and Sale Agreement. Exhibit "16" indicates
12 the Purchase and Sale Agreement was dated June 7, 2009
13 but you recall receiving that document approximately
14 June 29, 2009. Did Mr. Zygelman ever give you an
15 explanation for the delayed response?

16 A (SHAKING HEAD)

17 Q No.

18 A No.

19 Q Did you ask him for an explanation?

20 A I inquired two or three times as to when I'm going to
21 get a copy of the Purchase and Sale Agreement and
22 never -- and quite frankly didn't get a response.

23 Q You sent an e-mail asking?

24 A Yes. Well, let me back up on that because I asked --
25 I also inquired of Jacob Mesika, "Jacob, please make

1 sure Mr. Zygelman gets that to us because it's going
2 to affect your draws if you run out of time and don't
3 get another extension."

4 Q And then Exhibit "17" which was the Addendum to
5 Purchase Agreement Dated June 7, 2009, indicates there
6 will be a release of \$30,000 by the buyer, but you've
7 indicated you never received that.

8 A Never received it.

9 Q I'm going to direct your attention to 1A of that
10 document, Exhibit "17," where it says "Money will be
11 put back into escrow from the note holder/bank from
12 the first monies to be released for completion of work
13 on the home." Did GMAC ever agree to that?

14 A Absolutely not.

15 Q Why not?

16 A Because as I tried to explain earlier that if they --
17 in the conversations and everything -- if that was
18 what they were going to want to do, that was an
19 exception to their construction loan, they would have
20 to provide a full line item cost breakdown of all
21 those improvements and upgrades that were going to be
22 done. That would then be validated then through a
23 re-certified appraisal to make sure that those moneys
24 that are being invested or not are not diminishing the
25 security for the Bank. Then that would go to GMAC for

1 exception approvals which at that time then they would
2 have required that the funds be deposited into a GMAC
3 Construction Account to be drawn first. There is no
4 way that GMAC Bank or any other construction lender
5 would just say: Oh, yeah, go right ahead and release
6 funds to a buyer and the bank's going to pay you back.
7 That's just -- I'm sorry, but I've been in this for 33
8 years and I've never heard of anything like that.

9 Q Was that ever explained to Mr. Zygelman or no?

10 A Absolutely. And as a matter of fact it was explained
11 to Mr. Zygelman in a phone conversation with Jacob
12 Mesika, so it was Mr. Mesika and Mr. Zygelman. And it
13 was Mesika who was asking most of the questions and
14 pushing for it. Because I think I got the impression
15 that Mr. Zygelman really wasn't a hundred percent sure
16 of what they were doing. And that could have been the
17 stress of his wife being in the hospital or what, so
18 it was a little bit of ...

19 Q Could you spell Mr. Mesika's name, if you know.

20 A It's Jacob Mesika, M-E-S- I think it's -I-C-A-K.
21 That's probably not right.

22 Q Okay. I appreciate your attempt. Thank you.

23 In your conversation with the escrow officer on
24 this subject property did that escrow officer ever
25 request from you a Certificate of Occupancy?

1 A No. Because when I called Wilshire Escrow to
2 validate, they told me that the deal was dead. And
3 remember I didn't get this Purchase and Sale Agreement
4 till about the 29th.

5 Q Okay. So they didn't ask you about any clouds or
6 liens?

7 A No.

8 Q I'm going to have marked as Exhibit "19" an e-mail
9 dated August 17th, 2009, and I'm going to show it to
10 your attorney and I'll ask him to present it to you.
11 The copy on this is of poor quality. If you have
12 trouble reading it, let me know. I have a better copy
13 of it. But I'd like you to review it and see if it
14 refreshes your recollection.

15 MR. LIU: Can we just stop for a second,
16 that's really hard to read.

17 MR. BARBAG: Sure.

18 MR. LIU: I think I have a copy of it.
19 I could show you to make sure that it's the same.

20 MR. BARBAG: Sure. That's fair. It's
21 BATE scanned 000150.

22 Don't strain your eyes, Mr. Robertson. If you
23 can't find it, I'll get a clearer copy to you.

24 Let's go off the record for a moment.

25 THE VIDEOGRAPHER: The time is now

1 approximately 3:40 p.m., we are off the record.

2 (Off the record.

3 //

4 THE VIDEOGRAPHER: The time is now
5 approximately 3:43 p.m.

6 //

7 (Exhibit No. "19" marked for
8 identification by Reporter.)

9 //

10 Q (by Mr. Barbag) Okay. Now, Mr. Robertson, you've had
11 a moment to review this Exhibit "19," does it refresh
12 your recollection?

13 A Well, not really, but I mean there's a fog there
14 because I note that the bottom on August 15th, which
15 is a Saturday, that states "Are you now trying to tell
16 me that there is no sale of the property?" This is a
17 Saturday.

18 Q Correct.

19 A On the 17th apparently I did have a discussion with an
20 escrow officer and I honestly can't remember who it
21 was or what escrow company because everything was
22 being scrambled at that time because Mesika was
23 calling the Bank two or three times that day and Mark
24 Thomas was calling because we couldn't do the final
25 draw -- or do a final, a disbursal, of that \$11,000

1 because the project wasn't completed. And I think
2 that's -- I'm going to have to take a couple of
3 minutes here to try and recall just exactly, but I'm
4 sure that it was Zygelman probably either e-mailed me
5 or Jacob e-mailed me and gave me the name of the
6 escrow officer to call to validate, which it seems
7 kind of silly to me that a Preliminary Title Report
8 hadn't been ordered. I mean again there was just so
9 many validations that weren't in place here.

10 So obviously I sent Mr. Zygelman an e-mail on the
11 17th as I sent him one on the 15th questioning as I
12 sent him one the week previous as: You don't have to
13 tell me you don't have a sale anymore because they
14 tell me you didn't have a sale. This is after I had
15 talked to the escrow company and the real estate
16 agent, they said the deal died. Then apparently
17 Zygelman had to have contacted me to give me the name
18 of an escrow officer to talk to.

19 Q So there may have been more than one conversation with
20 an escrow?

21 A Yeah, but I'm not sure who the escrow company would
22 have been.

23 Because again I think if you look through your
24 records you'll find that back in June there was a
25 disbursal -- there was a request from -- oh, there was

1 an e-mail from Wilshire Escrow to -- I'm not sure who
2 it was -- but basically saying: Well, you'll have to
3 get your money from Mr. Zygelman. And that tells me
4 that there was a deal that died at that point in time.
5 So what happened is he may have had another -- I
6 honestly don't know. So it got a little confusing at
7 the end there.

8 Q So in June you thought you may have received an e-mail
9 from the escrow agent or maybe you had been cc'd on it
10 from the escrow agent about getting money from
11 Mr. Zygelman?

12 A Yes. And that's in Mr. Zygelman's response.

13 Q Okay. So in June you knew there was funds or you were
14 told that funds had been disbursed on this project by
15 Hayomyom through the escrow agent.

16 A No. No. Well, not that they disbursed to anybody,
17 no. What I have seen is a copy of a check made out to
18 Wilshire and then an e-mail from Wilshire telling
19 someone to go get the money from Zygelman.

20 Q And you saw that --

21 A (Interposing) When I got the statements here.

22 Q I understand.

23 A I'm sorry.

24 Q I think we were both at fault on that one.

25 Do you know approximately how long it usually

1 takes an escrow company to release funds once they
2 have that permission to release it?

3 A No.

4 Q Do you know who Susan Young is?

5 A Yes.

6 Q And who is she?

7 A She is or was kind of like the manager of the
8 processing staff in Fort Washington, Pennsylvania.

9 Q Do you know if she worked in that capacity in 2009?

10 A Yes.

11 Q And in 2010 as well?

12 A I don't know.

13 Q Do you know if she ever had the title of Credit Risk
14 Manager?

15 A Not when I was there.

16 Q Do you know what her duties were in 2009?

17 A Not -- I couldn't, I can't quote you what her duties
18 were, no. She was the Manager and overseeing the
19 staff that worked back there.

20 Q The staff for processing. Is that right?

21 A Yeah. Like I had mentioned Patty Costello, Patty
22 answered to Sue.

23 Q And they would process what in particular?

24 A Well, anything that had to do with the construction
25 loan paperwork relative to once they got the release

1 or the okay from me or my counterparts I was okay to
2 go ahead and release a draw, then they would go ahead
3 and do all of the inputting and doing what they had to
4 do to ensure that the checks or the wires were taken
5 care of. If there was a Title Date Down Endorsement
6 that needed to be done, they would call the title
7 company and get the Date Down Endorsements. If there
8 was insurance lapsing, they would call the customer
9 and make sure the insurance didn't lapse or at least
10 premiums were paid or what have you. So I mean a lot
11 of that kind of detail work.

12 Q Do you know if she was attempting to facilitate the
13 purchase of a Note held by GMAC --

14 A (Interposing) I have no idea.

15 THE COURT REPORTER: Counsel, would you
16 please repeat that question.

17 MR. BARBAG: Sure.

18 THE COURT REPORTER: Thanks.

19 //

20 Q (by Mr. Barbag) Do you know if Susan Young had been
21 attempting to facilitate the purchase of a Note held
22 by GMAC on the subject property?

23 A No.

24 Q You don't know?

25 A I have no idea.

1 Q Over the course of the construction on the subject
2 property approximately how many conversations did you
3 have with Mr. Zygelman?

4 A Probably less than ten.

5 Q Okay. Are you including e-mails in that as well?

6 A You said conversations.

7 Q That's true. I didn't define it. So you're
8 considering those ten telephonic. Is that right?

9 A Correct.

10 Q How about e-mail conversations?

11 A I honestly don't know how many. As a for instance you
12 can see on Exhibit "17" (sic) it was a one liner, it
13 just says: Are you trying to tell me that there's no
14 sale of the property? And that's an e-mail.

15 Q I believe that's "19"?

16 A "19," excuse me, yeah. So, you know, that's
17 considered an e-mail. I don't know how, you know, ...

18 Q Hundreds probably?

19 A Well, I don't know about hundreds.

20 MR. LIU: Objection, misstates his
21 testimony.

22 MR. BARBAG: Okay, I'm just trying to
23 jog his memory.

24 //

25 Q (by Mr. Barbag) Over a hundred?

1 A To Mr. Zygelman?

2 Q Yes.

3 A No, I don't think it would be that many. I don't
4 think it would be over a hundred.

5 Q But close to it?

6 A I don't think so because most of my conversations and
7 most of my dealings were with Mesika, Mr. Zygelman did
8 not want to deal with it.

9 Q Okay. How many telephone conversations did you have
10 with Mr. Mesika?

11 A Oh, probably 20 or more.

12 Q And approximately how many e-mails?

13 A Jacob, I don't know, less than -- well, let's see
14 here, less than 50.

15 Q Did you consider Mr. Zygelman your client?

16 A Can you clarify that when you say my client.

17 Q Sure. You were providing services to him.

18 A I was providing services for GMAC Bank to the client
19 Mr. Zygelman, yes.

20 Q And he never directed you to release any funds to
21 Mr. Zipp or Hayomyom?

22 A Never.

23 Q I think I asked this before, I'm sorry if I have.

24 A That's okay.

25 Q You only learned about the release -- you only learned

1 about Mr. Zygelman receiving funds from Mr. Zipp
2 and/or Hayomyom due to this lawsuit. Is that correct?
3 A Correct.
4 Q What was the reason that you decided to leave GMAC?
5 A My contract was up, portfolio was reduced to a
6 manageable level for closeout.
7 Q Did they ask you to resign?
8 A It was not a resignation. I was under a contract.
9 Q How long was that contract supposed to be for?
10 A The last phase of the contract was from I believe
11 June 1st, 2009 to December 31st, 2009.
12 Q So you had six month contractual increments?
13 A No.
14 Q When did you first have a contract with GMAC?
15 A When they changed our titles and positions from
16 Regional Sales -- or District Sales Managers to
17 District Risk Managers, at that time they had
18 anticipated that it would take us about a year to
19 close out the portfolio. They made a determination
20 then in '09 that there was four of us, that we could
21 probably finish out the last six months with only two
22 of us; I was one of the two that were kept on.
23 Q While you were working at GMAC about how many times
24 per year was your job performance evaluated?
25 A I was not evaluated.

1 Q Were you ever disciplined while you were working at
2 GMAC?

3 MR. LIU: Objection, irrelevant to the
4 Complaint, Cross-Complaint, outside the scope of the
5 Motion to Quash.

6 Instruct not to answer.

7 //

8 Q (by Mr. Barbag) Were you ever disciplined as a result
9 of the subject property while working at GMAC?

10 A No.

11 Q So you never received any demotion as a result of
12 dealing with the subject property?

13 MR. LIU: Objection, asked and answered.

14 You can answer.

15 THE DEPONENT: I can?

16 MR. LIU: You can.

17 //

18 A No.

19 Q (by Mr. Barbag) You mentioned you had two other
20 depositions previous to this one. Was it related to
21 your work at GMAC?

22 A No.

23 Q You indicated you left Frontier because it wasn't a
24 good fit. Could you expand on that?

25 MR. LIU: Objection, it's irrelevant,

1 it's outside the scope, it's outside the relevancy of
2 the Complaint, Cross-Complaint, has nothing to do with
3 the current loan of any promises that were made to
4 Hayomyom.

5 MR. KOEHLER: Not outside the purview of
6 the Complaint or Cross-Complaint in that how he had
7 handled previous loans for other lenders may show a
8 course of conduct in this situation, so I think it is
9 relevant to that purpose.

10 MR. LIU: Then I think we need to
11 establish a foundation that Frontier made loans in
12 California first.

13 MR. KOEHLER: You may be right.

14 //

15 Q (by Mr. Barbag) Did Frontier ever make loans in
16 California?

17 A Not that I'm aware of.

18 Q Okay. Did they have any association with California
19 customers?

20 A Not that I'm aware of.

21 Q Do you recall receiving service of the Summons and
22 Complaint in this matter?

23 A Yes.

24 Q Do you recall telling the person who was serving you
25 that you didn't know who Robertson was?

1 MR. LIU: Objection, it's irrelevant.

2 MR. BARBAG: Goes to harassment.

3 //

4 A No, I don't recall that.

5 I can recall that I was not the most gracious of
6 someone who is trespassing on my rural country
7 property we don't know and up here you don't just
8 trespass on a man's property.

9 Q So you didn't --

10 A (Interposing) So I wasn't greeting him with open arms,
11 no.

12 Q And you didn't deny that you were in fact --

13 A (Interposing) I didn't deny who I was. He was trying
14 to force a piece of paper on me, I wouldn't take it.

15 Q Okay. And you never denied that you were Robbie
16 Robertson?

17 A No.

18 I mean it's real obvious on my house. My name's
19 on my mailbox, my wife's out in the yard with me,
20 she's standing right there, you know, come on.

21 Q There's no way for this person to know who your wife
22 is, is there?

23 A So I would imagine there's no way for that person to
24 know who I am.

25 Q Exactly. And if you denied who you were, it would be

1 much more difficult.

2 A No.

3 MR. BARBAG: I'm going to review my
4 notes, but I'm going to pass to Counsel and see if he
5 has any other questions.

6 MR. KOEHLER: Yes, I've got just a few
7 followup questions.

8 //

9 //

10 QUESTIONING BY MR. KOEHLER:

11 Q Mr. Robertson, I believe earlier in the afternoon you
12 indicated that when the California rep left in about
13 June of '08 the California accounts were divided up
14 and you got the accounts from Fresno north?

15 A Correct.

16 Q Is that a correct statement?

17 A That's correct.

18 Q And we're talking again about the construction
19 contracts?

20 A Correct.

21 Q Okay. Who took the Southern California accounts, the
22 accounts south of Fresno?

23 A A gentleman by the name of Brian -- what's Brian's
24 last name. I can't recall his last name at this time,
25 but he had been the Nevada/Arizona rep.

166

1 Q So Brian whatever his last name is had accounts in
2 Nevada, Arizona and then California south of Fresno --

3 A (Interposing) Correct.

4 Q (Continuing) -- after that date? Did he cover any
5 other areas?

6 A I don't -- he probably did because you know it's 50
7 states and there's only 4 of us, but I can't recall
8 the ones that he had.

9 Q Prior to him assuming those construction contracts in
10 around June of '08 do you know if he had serviced any
11 -- had he previously serviced any California
12 construction contracts?

13 A Not that I'm aware.

14 Q You indicated that during the course of the Zygelman
15 construction loan Mr. Zygelman represented to you on
16 about three occasions that he had a buyer or he had a
17 sale?

18 A Correct.

19 Q Can you remember when the first instance was?

20 A December 2008 when we had our conversation of that's
21 when he said he was going to -- he had some people
22 over interested in buying it and he would probably
23 just end up having to sell it because he couldn't
24 qualify for any takeout financing.

25 Q Well, now did he say he had people interested in

1 buying or did he say he had a sale?

2 A He said he had people interested in buying it. The
3 home wasn't completed at the time.

4 Q Okay. And did he ever present to you any type of
5 sales agreement with respect to that December of '08
6 conversation?

7 A No.

8 Q Did you ever ask for any sales documentation regarding
9 that December '08 conversation?

10 A I informed him at that time: If you get a sale on the
11 property, please provide us with the copy of the
12 executed Purchase and Sale Agreement.

13 Q And was that communication orally or was it --

14 A (Interposing) Oral.

15 Q Oral. Okay. When was the second occasion that
16 Mr. Zygelman indicated to you that he had a sale on
17 the property?

18 A That's I'm a little cloudy on the dates on that. I'm
19 thinking that that was going to be somewhere around
20 April, March or April of 2009, but I'm not a hundred
21 percent certain if that's a correct date.

22 Q Okay. Did he tell you that he had a sale or he had
23 people that were interested in the house?

24 A He said that he was pretty confident that he had a
25 sale, but he needed to get the house done before they

1 would execute.

2 Q And did he tell you who he thought he had a sale with?

3 A No.

4 Q During the December of '08 conversation did he tell
5 you who he --

6 A (Interposing) No. I'm sorry.

7 Q Who was interested in the house or who he had a sale
8 with?

9 A No.

10 Q The conversation regarding the third instance in which
11 he said he had a sale, when was that?

12 A That would have been first part of June.

13 Q Of '09?

14 A '09.

15 Q And did he tell you with whom he had a sale?

16 A No.

17 Q Did you ask?

18 A I told him to send me a copy of the Purchase and Sale
19 Agreement.

20 Q Now, you indicated that at sometime, I believe you
21 said in June, that you had a conversation with an
22 escrow company wherein you were told that the sale had
23 been cancelled?

24 A Correct.

25 Q Okay. Was that Wilshire Escrow?

1 A Correct.

2 Q Okay. And who was it at Wilshire Escrow?

3 A I do not recall.

4 Q And do you recall when in June that was?

5 A It's going to have to be when I had a copy of that
6 Purchase and Sale Agreement, so that's going to be the
7 end of June.

8 Q So it's your best recollection the end of June of
9 2009.

10 A Correct.

11 Q And this conversation with somebody at Wilshire Escrow
12 you were told that the escrow had been cancelled?

13 A Yes.

14 Which seems to be confirmed by the e-mails sent
15 from Wilshire Escrow.

16 MR. BARBAG: Motion to strike.

17 MR. KOEHLER: Move to strike, there's no
18 question pending.

19 Does anybody have a copy of Exhibit "17"?

20 MR. BARBAG: (Hanging) You want another
21 Exhibit?

22 MR. KOEHLER: No, I wasn't sure which.

23 //

24 Q (by Mr. Koehler) Now, Mr. Robertson, you made a
25 statement earlier that you can't finance an LLC. Were

170

1 you speaking on behalf of GMAC or is that what your
2 understanding is of the statutes in the state of
3 California regarding --

4 A (Interposing) That is based upon secondary market
5 underwriting requirements, national.

6 Q (Interposing) For GMAC? National?

7 A National. That's through FANNIE MAE, Federal National
8 Mortgage Association or Federal Home Loan Mortgage
9 Corporation, FREDDIE MAC.

10 And if I can clarify that up again. That only
11 goes to residential mortgage loans, does not apply to
12 commercial loans.

13 Q Of the five to six other jumbo loans that you were
14 handling for California properties was construction
15 completed on all of those residences?

16 A By the time I left I think there was only one left at
17 that time and that was -- no, there wasn't -- no, no,
18 all the jumbos were closed out.

19 Q When you say "closed out" do you mean construction was
20 completed?

21 A Construction was completed and loans were off the
22 books.

23 Q And were any of those loans converted to permanent?

24 A Not with GMAC. With other secondary lenders.

25 Q Is that pursuant to the policy that had been

1 instituted by GMAC that they would not make permanent
2 jumbo loans?

3 A Yes.

4 Q Did you happen to see the loan agreements on any of
5 those permanent loans that those five to six
6 individuals obtained?

7 A I'm not sure when you say "loan agreements".

8 Q Okay, fair enough, let me restate it.

9 You indicated that the five to six construction
10 loans that you were handling on behalf of GMAC were
11 completed and closed out and the individuals that had
12 those construction loans obtained permanent financing
13 somewhere else.

14 A Correct.

15 Q Okay. Those loan agreements between those individuals
16 and I'll call it a third party lender, ...

17 A Okay.

18 Q (Continuing) ... did you ever happen to see those
19 contracts?

20 A No.

21 MR. KOEHLER: I think that's about all I
22 have.

23 MR. BARBAG: Counsel, do you have any
24 questions?

25 MR. LIU: None.

1 MR. BARBAG: That kind of concludes it.

2 MR. KOEHLER: Can we go off the record a
3 second?

4 MR. BARBAG: Yes.

5 THE VIDEOGRAPHER: Without ending the
6 deposition?

7 MR. KOEHLER: Without ending it.

8 THE VIDEOGRAPHER: Okay. Stand by. The
9 time is now approximately 4:10 p.m., we are off the
10 record.

11 (Off the record.)

12 //

13 THE VIDEOGRAPHER: We are on the record,
14 the time is now approximately 4:12 p.m.

15 MR. KOEHLER: Off the record counsel had
16 a conversation as how we were going to get the
17 transcript to Mr. Robertson for him to read, review,
18 sign. It was agreed and we've been led to believe
19 that it is not contrary to any statutory Washington
20 law that when completed the Court Reporter will mail
21 the original transcript to Mr. Liu, counsel for
22 Mr. Robertson, who will see to it that Mr. Robertson
23 reads, reviews, signs under penalty of perjury within
24 30 days and that any corrections that Mr. Robertson
25 makes to the deposition transcript Counsel will advise

173

1 all of the counsel in writing within 10 days of
2 receipt of those changes as to the nature of those
3 changes; that upon Mr. Robertson signing the
4 transcript under penalty of perjury he shall forward
5 it to Mr. Liu for safekeeping; Mr. Liu will advise all
6 other counsel the date in which it is signed. Mr. Liu
7 will be the custodian of the original for all purposes
8 and will produce it at any hearing, mediation,
9 arbitration, trial upon reasonable notice and his
10 failure to do so, a certified copy can be used in lieu
11 thereof for all purposes.

12 MR. LIU: So stipulated.

13 MR. BARBAG: I would just like to add:
14 And if it's not signed, then it's deemed signed after
15 30 days.

16 MR. LIU: So stipulated.

17 MR. BARBAG: So stipulated.

18 MR. KOEHLER: Thank you, Mr. Robertson.

19 THE VIDEOGRAPHER: I'm going to have a
20 quick statement to go off the record. The time is now
21 approximately 4:14 p.m., this marks the end of Tape
22 Number Four as well as marks the end of the deposition
23 of Robbie Robertson on May 17, 2012. We're off the
24 record.

25 MR. KOEHLER: Excuse me, the first

1 volume of Mr. Robertson's deposition.

2 THE VIDEOGRAPHER: Okay. We're off the
3 record.

4 (VIDEOTAPED DEPOSITION UPON
5 ORAL EXAMINATION OF ROBBIE
6 ROBERTSON WAS ADJOURNED
7 AT 4:14 P.M. ON
8 MAY 17, 2012)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

S I G N A T U R E

I, ROBBIE ROBERTSON, declare under penalty of perjury under the laws of the State of Washington and the State of California that I have read my deposition transcript and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the Correction Sheet. Signed in _____, Washington on the ____ day of _____, 2012.

ROBBIE ROBERTSON

1 STATE OF WASHINGTON)

: ss

CERTIFICATE

2 COUNTY OF SNOHOMISH)

3 I, PAUL W. RODE, Certified Court Reporter and Notary
4 Public in and for the State of Washington, do certify:

5 That the Videotaped Deposition Upon Oral Examination
6 of ROBBIE ROBERTSON was taken stenographically before me
7 and reduced to typewritten form;

8 That all objections made at time of said deposition to
9 my qualifications or the manner of taking the deposition
10 have been noted by me upon said deposition transcript;

11 That I am not a relative or employee or attorney or
12 counsel of any of the parties or attorneys to said action,
13 and that I am not financially interested in the said action
14 or the outcome thereof;

15 That ROBBIE ROBERTSON was duly sworn before testimony
16 was taken to testify to the truth, the whole truth and
17 nothing but the truth;

18 That the transcript is a true record of the testimony
19 given by the deponent ROBBIE ROBERTSON;

20 IN WITNESS WHEREOF, I have hereunto set my hand and
21 affixed my official seal this 28th day of May, 2012.



Paul W. Rode
PAUL W. RODE, CCR, NOTARY PUBLIC
My commission expires 11/26/13.
CCR# 299-06

Exhibit B

Message

Page 1 of 2

8

Sigmund

From: Robertson, Robbie - PA [robbie.robertson@gmacbank.com]
Sent: Thursday, February 05, 2009 08:01
To: Sigmund
Subject: RE: Home Owners Insurance

Mr Zygelman

Assuming that you draw your complete construction loan amount, the balance owing to GMAC is \$1,190,000. Also, as we had discussed a number of months ago, GMAC is not doing Jumbo loans any longer and you would need to secure financing from another outside source. I had also agreed to waive the non conversion penalty that is called for in the construction loan documents. As the project is nearing completion, we have ordered a new appraisal for bank internal purposes. I will let you know the results of the updated appraised value and will work with your chosen take out lender in assisting them with any property or loan payoff information they might need. If you can let me know who the lender will be I will reach out to them with my offer of assistance.

Thank you

Robbie Robertson
GMAC Bank
Construction Lending
District Risk Manager
WA,OR,ID,HI,AK,CA
19664 E Conway Hill Lane
Mount Vernon, WA 98274
cell - 360.770.0444
fax - 866-303-8284
robbie.robertson@gmacbank.com

All correspondence concerning customers must be sent using the GMAC NAMING CONVENTION (lastnamefirstname@loan#) on the subject line. Please notify your borrowers and contacts if they are sending emails or documents directly to the construction department.

The information contained in this communication is confidential and privileged proprietary information intended only for the personal and confidential use of the individual or entity to whom it is addressed. If you are not the addressee indicated in this message (or an agent responsible for delivery of the message to such person), you are hereby notified that you have received this communication in error and that any review, dissemination, copying or unauthorized use of this message is strictly prohibited. In such case, you should destroy this message and kindly notify the sender by reply e-mail.

From: Sigmund [mailto:csez@ix.netcom.com]
Sent: Wednesday, February 04, 2009 5:42 PM
To: Robertson, Robbie - PA
Subject: RE: Home Owners Insurance

Have already received invoice from Travelers insurance and mailed them payment check for continuation.

On an other note: please inform of total principal amount due to GMAC upon completion of construction loan.

6/16/2011